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HEARINGS

Before The

SUBCOMMITTEE ON AIR AND WATER POLLUTION

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

EXECUTIVE SESSION

AIR AND WATER POLLUTION

*construction grant/reimbursement
authorizations - Title II
civil penalties, ngs*

EXECUTIVE SESSION

Washington, D. C.

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EXECUTIVE SESSION

AIR AND WATER POLLUTION

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AUGUST 4, 1971

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United States Senate,

Subcommittee on Air and Water
Pollution of the Committee on
Public Works,

Washington, D.C.

The Subcommittee met, pursuant to recess, at 10 a.m.,
in Room S-126, The Capitol, Honorable Edmund S. Muskie
(Chairman of the Subcommittee) presiding.

Present: Senators Muskie, Boggs, Eagleton, Tunney,
Cooper, Randolph, Buckley and Bentsen.

- - -

Senator Muskie. The Subcommittee is in order.

As I indicated quite earlier this week, it is my
hope that we will report this bill later today.

It seems to me that that is a reasonable objective
in the light of the agenda, which the staff has put together,
identifying the key issues before us.

We have discussed them all. I think we have given

1 sufficient consideration to the issues, and it seems to be
2 in order to make decisions now, whatever they are, and to do
3 so before this day is over.

4 It is conceivable, I suppose, we will be running
5 back and forth with so many votes, that we will be frustrated,
6 but I would like to start with that goal in mind, and see
7 what we can do.

8 Senator Boggs. May I add just by way of understanding,
9 Mr. Chairman, I want to join you in accomplishing this effort
10 today, and in consideration of that, that we go to the
11 full Committee, and while we may firm up and report this to
12 the Subcommittee, if we have second thoughts or new evidence,
13 or additional thoughts to go before the full Committee, that
14 we are not prohibited from doing so and from discussing them
15 at that time.

16 Senator Muskie. Exactly. That has been the traditional
17 procedure of the Committee, and I would not consider that
18 any member is prohibited in his own mind from presenting any
19 provisions on the trip from here to the full Committee.

20 I do hope though that we give it such consideration
21 that there will be a minimum of reconsideration at the full
22 Committee, but I certainly would not try to restrain or
23 inhibit anybody from protecting his rights and his interests
24 in the Full Committee sessions.

25 That is the only way really that you can proceed.

1 Senator Cooper. What kind of program do you have
2 in the full Committee?

3 Senator Muskie. Well, the full Committee of course
4 could not give it consideration until after the recess.

5 We have not scheduled the time, but really the
6 recess fits in very well, because if we finish our work
7 today, then we have all got at least thirty days before the
8 full Committee, and we can review what we have got, change
9 our minds, or whatever we wish, so I think that is a real
10 reason for doing it today, and then resolve it as best as we
11 can today, and then everybody has full rights to change his
12 views in the full Committee, and I think doing it this way,
13 it maximizes use of the full Committee's sessions.

14 Again, I would hope we would not use the full
15 Committee to review everything we have done, to upset the
16 whole apple cart, so I think that would take care of itself.

17 I do not think it is the disposition of anybody on
18 this Committee to obstruct or be obstructive about that.

19 I know that a lot of the members of the Committee will
20 still have questions about some of the concepts that we are
21 talking about, but I think we have reached a point where we
22 ought to start making decisions.

23 I would be glad to cooperate in every way that I can
24 today. I would like to suggest, as we have got the agenda, I
25

1 would like to get down to number three, first, which is
2 construction grants.

3 Number five. I am sorry. Senator Eagleton raised
4 his proposal for reimbursing the states.

5 As you recall, the provisions of the bill, the one
6 which I favored, and I will not engage in any extensive
7 discussion, the provision of the bill is going back to
8 1966, that we reimburse states, and through the states, the
9 municipalities up to fifty percent of project costs.

10 The objective here was to put all states, all
11 communities on an equal footing with respect to the Federal
12 contribution, whether or not they are states that have
13 developed natural programs, and the rationale was in the
14 new formula, when we were re-arranging the Federal contri-
15 bution, taking into account the fact that some twenty states,
16 or thereabouts have not produced matching funds, matching
17 programs, the result is that a lot of communities through
18 no fault of their own were deprived of the Federal support
19 that was available, so I propose going back to 1966, and bring-
20 ing them all up to the 50 percent level.

21 I guess it would be fifty-five.

22 Mr. Billings. Fifty percent or a higher percentage,
23 that they would be entitled to.

24 Senator Muskie. Fifty, fifty-five going back to
25 1966.

1 Senator Eagleton's amendment is a substitute for that,
2 and his proposal is to go up to 30 percent, going back to 1956.

3 Well, he can commence his argument.

4 Senator Eagleton. Mr. Chairman, I will be very brief.
5 We had one go-around on this before, without pressing it, which
6 is generally discussing it, and I have got to preside at
7 another hearing, but my amendment does not tamper with the concept
8 presently in the bill.

9 You stated it quite accurately, the language in the
10 bill now from '56 to date, there would be a reimbursement of
11 up to fifty percent, or perhaps percent.

12 I would go back a step further, I would leave that as
13 it is, but for the period of 56 when the first water bill
14 went into effect, Federal bill, to 56, that ten year period,
15 I would reimburse those sewer districts, cities that built
16 treatment facilities at the 30 percent Federal formula that was
17 then in effect, but did not avail much to cities that built
18 facilities at that time, because of a \$250 thousand limitation
19 that was written into the law in 1956, later upped in 1961
20 to \$600 thousand, but still a rather tight limitation, bearing
21 in mind the substantial costs of some of these facilities, and
22 I have a list of the cities that did invest huge amounts of
23 money and what they were reimbursed under the old formula, so
24 I move the reimbursement to those cities, and I believe Leon
25 has the figures, it is something in the neighborhood of \$200

1 million more, or added to the language presently in the bill.

2 Senator Muskie. I guess I misunderstood the
3 amendment. It is a substitute rather than a supplement.

4 Senator Eagleton. I guess in part it is. It takes
5 the present language and adds on to it. It does not take
6 away the fifty percent reimbursement for the period you have
7 discussed, Mr. Chairman. This goes a bit further.

8 Senator Muskie. The difference between the two, as
9 I understand the concept, is in the case of what I proposed,
10 I proposed that the Federal Government has made a commitment
11 of fifty percent support, it was prepared to fund and pay
12 that fifty percent, but it depended on the matching state
13 funds, and because of the matching funds, some communities
14 did not receive those funds, so in effect there was a limiting
15 of the funds to communities because of the failure of states
16 to act.

17 It seems to me that that was the retroactive concept
18 that did not open the door, or did not set a precedent that
19 the Senate and Congress might consider as unfortunate, and it
20 is that we retroactively change the Federal proportion of the
21 project costs.

22 Whether it was fair or not to set it as we did back
23 in 1956, or as the Congress did, we were not around, that was
24 one point, but it was a deliberate decision made by the
25 Congress, and to go back and change it to thirty percent is

1 to in effect rewrite the Federal obligation.

2 My amendment does not change the Federal obligation.
3 It just changes the consequences of the failure of the states
4 to act, and I think that is a distinction of substance and
5 will not open the door and the argument I made last time in
6 that there are other programs, the interstate highway program,
7 in which states showed initiative and assumed responsibilities,
8 and they had not been reimbursed because Congress had been
9 reluctant to open that door to retroactive reimbursement.

10 Senator Eagleton's proposal opens the door, although
11 it does not allow a large amount of money by comparison of the
12 totals, nevertheless it is the principle.

13 Let me give you the numbers. Under the bill as it
14 is written, reimbursement provision costs one billion 536
15 million.

16 Of that, \$400 million is now owed under reimbursement
17 provisions for the 1966 law, so the new obligation that we would
18 be assuming for the Federal Government is \$400 million, and
19 then the Eagleton amendment would be \$200 million. Add to
20 that one-billion 136 million, which we owe, without either
21 provision, and then \$400 million that we add on additionally
22 under the provision of the bill, and then \$200 million under
23 the Eagleton provision. That is the proposition, and I think
24 we have discussed it.
25

1 Senator Cooper. Am I correct that you are going up
2 to 30 percent, which only covers the period from 56 to 66, and
3 after 66, you go to 50 percent?

4 Senator Eagleton. Yes.

5 Senator Cooper. Now, under either proposal, that
6 goes only to the terms of indebtedness, or the construction
7 of new facilities, is that correct?

8 Senator Eagleton. Under both propositions.

9 Senator Cooper. And then have we got reliable figures
10 under the costs of each proposal?

11 Senator Muskie. I just recited them.

12 Senator Cooper. Pardon me.

13 Senator Muskie. Under the reimbursemnt provision
14 that has been in effect since 1930 and 1966, we now owe
15 \$1 billion 136 million. That we owe, whether either provision
16 is approved or not, but it is confirmed by the language that
17 I had put in the bill, and provides for the method of repay-
18 ment, so that is why it is covered, and then my amendment
19 would provide an additional obligation of \$400 million to
20 bring everybody up to 50 percent.

21 Under my amendment, in addition to the one billion,
22 and then the Eagleton amendment, it would add another \$200
23 amendment.

24 Senator Cooper. I will ask, in the case where you
25 are reimbursing, the purpose would be for retirement of

1 debt?

2 The retirement or the reimbursement is lump sum, or do
3 you reimburse over the years, as the debt comes due, principal
4 and interest, and, of course, it would have a budgetary
5 effect?

6 Senator Muskie. The question is whether or not the
7 reimbursement is used to retire debt, and is the retirement
8 in accordance with the debt retirement schedule, associated
9 with the project, or what are the mechanisms, or is that
10 left to the administrator, is that the question?

11 Senator Cooper. Yes.

12 Mr. Billings. To clarify that, the regulation would
13 have to be established--

14 Senator Cooper. It is possible, as I understand
15 it, if you go to the Federal Highway System, so it seems it
16 could provide the reimbursement for the debt service as it
17 comes to?

18 Senator Beall. I understand the original law, 1950,
19 1956, the Federal Government said to the communities, we
20 will give you up to 30 percent, and not to exceed \$250
21 thousand in construction of any treatment facility, so that
22 anybody that went ahead and constructed their facility, they did
23 so knowing exactly how much Federal contribution they were
24 going to get?

25 Senator Eagleton. That is true.

1 Senator Beall. What you are talking about is a case
2 in which the communities went ahead, thinking they might get
3 some money, but did not get it, because their states did not
4 come up with the kind of standards, the Congress anticipated,
5 is not this the significance?

6 Senator Muskie. I think that this is the case, and
7 how much weight you put to it, it will vary, because from
8 some states they hoped they would get up to fifty percent,
9 but I think the districts in question could pretty well tell
10 whether their legislatures were going to help them out or
11 not, and they went ahead with at least pretty full knowledge
12 they were going to get the whole fifty percent.

13 Senator Beall. I see.

14 Senator Muskie. The purpose written in the bill is to
15 let the situation fall into three categories.

16 One, those states where the states did not produce
17 matching funds.

18 Secondly, those states which were able to get the
19 matching funds to obtain maximum Federal grant simply by
20 making loans available to the community, and, thirdly, those
21 states that were able to get maximum Federal grants by making
22 grants available to the states.

23 It seems to me that there are obvious inequities that
24 ought to be ironed out insofar as Federal contribution, so
25 what we did, we just said let everybody come up with that

1 fifty percent Federal grant over this period, and wipe away
2 any question of inequities, and then begin anew with a new
3 program that makes clear the conditions on which the new
4 Federal maximum grant will be available, and that was the
5 principal motivation of this provision of the bill.

6 This administrative interpretation, making the state
7 loans sufficient, had not been issued, I doubt very much
8 that I would have advanced this proposition, but we had these
9 three situations, and it seems to be obvious inequities,
10 that we ought to try to wipe away, and there seemed to be a way
11 to do it, and it seemed not to be opening the door too wide,
12 because the Federal Government had already been committed
13 to this fifty percent, and that we ought to proceed with it.

14 This other thing, it sets a precedent for doing a
15 similar thing in the highway program, and in many other
16 programs, and that is why I decided not to go that extra step
17 of going back to 1956, but the other position is a perfectly
18 rational one.

19 There are equities there, as I understand, because
20 we have places in Maine for which they were never included,
21 even though they were included in the interstate system.

22 This is true of Connecticut, true of Pennsylvania,
23 and it is true I think of New York to some extent, so I under-
24 stand the inequities are there, but if we set that precedent,
25 I am fearful we may be building pressure to extend it to the

1 highway program and some others, and I did not want to com-
2 plicate the issue that much.

3 The \$200 million is not much when we are talking
4 of \$20 odd billion.

5 Senator Buckley. Mr. Chairman, I just have a feeling
6 that the states proceeded on the basis that the administra-
7 tive ruling was unfortunate, but it was made very recently,
8 not too many projects have been complicated under that
9 inequity, but I would hate to use that as the basis to
10 spend \$400 million, which the states and communities clearly have
11 not counted upon, at a time when our spending at the Federal
12 level is just getting clearly out of hand, so I would rather
13 hold the line.

14 Senator Muskie. Then we have three positions obviously
15 we can take.

16 I suggest that since Senator Eagleton's amendment has
17 been presented, we vote on that first, that we then proceed
18 to vote on the provision in the Committee print.

19 Senator Cooper. I do not want to elaborate on
20 the matter, but it seems to me that the principle is the
21 same on Senator Eagleton's amendment, but that the rules have
22 been changed.

23 The rules have been changed as respects to the
24 period between 55 and 66 and between 66 and 71, and there
25 is a difference between a loan and a grant, so I think the

1 Senator Boggs. May I ask you a question?

2 Where was the change from 56 to 56?

3 Senator Cooper. It was a restriction in the
4 appropriations.

5 Senator Muskie. I think there is another assumption
6 that the big cities somehow were more economically viable,
7 and they could build their own.

8 It is hard to recall in those days now with all
9 of this emphasis on revenue sharing and the city problems,
10 but that was the assumption, the assumption that the small
11 communities were less viable, and that they found it more
12 difficult to raise the money, so the program was directed at
13 them.

14 That was the assumption, which was false.

15 Well, if we are ready for the question, I think we
16 all understand it.

17 Why don't we ask Barry to call the roll.

18 (Whereupon, the roll call vote was as follows:

19
20 COMMITTEE INSERT:
21
22
23
24
25

1 Mr. Meyer. The amendment fails, four to seven.

2 Senator Muskie. Now let's vote on the provision
3 of the Committee print.

4 Senator Boggs. Mr. Chairman, on that, to be sure
5 I understand it, Senator Buckley did say again his attitude,
6 well, I would like to hear it again.

7 Senator Buckley. My feeling is even though one would
8 have liked all of the states to be active, they in fact
9 were not, therefore, under the ground rules, the communities
10 went ahead without expectation of reimbursement, therefore,
11 we should let things stand as they are, because we have got
12 to draw the line on Federal spending.

13 Also, this is an expenditure of a half a billion
14 dollars, and I fear that the people can leap on the band-
15 wagon later would create an inducement for people not to act
16 on the theory they can drag their heels.

17 For those reasons I oppose it.

18 Senator Muskie. Are we ready for the vote?

19 (Whereupon, the roll call vote was as follows:

20 COMMITTEE INSERT:
21
22
23
24
25

1 Mr. Meyer. Eleven to one, the amendment is adopted.

2 Senator Muskie. I think we just as well may take
3 up the question of Federal grants at this point and wrap
4 up the whole issue.

5 Mr. Billings. Page thirty of the print.

6 Senator Muskie. May I say, as we consider these
7 issues, I will put them to the Committee in terms of the
8 brief description of them on the agenda, and not get into
9 the full language of the Committee print, unless the members
10 want to get into that.

11 We can get hung up on language, but on the other
12 hand, I certainly will not object to any member getting into
13 language, and there are one or two issues, if that is the
14 case, then we would need to get into the language, which is
15 sufficiently new, some on this, on page thirty of the
16 Committee print.

17 This is the authorization.

18 Where is the formula?

19 Mr. Billings. Excuse me. The formula would be on
20 page 23.

21 Senator Muskie. Committee Counsel reminds me we had
22 earlier had a vote on this, but I think to make the record
23 clear, we had better have another vote today.

24 This begins, Federal share is described on page 23
25 at lines 7 to 14.

1 You recall that the amount of the grant shall be
2 60 percent of the estimated reasonable costs, as determined
3 by the Administrator thereof; except, that the amount of
4 such grant shall be increased to 75 percent of such estimated
5 reasonable cost if the State agrees to pay, by grant, not
6 less than 15 percent of the cost of any treatment works
7 constructed in such State.
8

9 That is the formula, but I would like to put it
10 before the Committee once more.

11 Senator Beall. I wonder if we should consider
12 increasing the grant, in addition to a bonus of secondary
13 treatment, a further bonus for a no-discharge policy, because
14 it seems to me we have heard increasingly, the secondary
15 treatment is not what we are seeking, but eventually we
16 would hope to get a no-discharge policy, therefore, if the
17 state could get a no-discharge policy, perhaps there should
18 be some inducement that makes them speed in that direction.

19 Senator Muskie. Well, if it is a viable one--

20 Senator Buckley. Mr. Chairman, in that connection,
21 a study has come to my attention being done at Woods Hole,
22 that a no-discharge policy may be desired under highly
23 controlled situations.

24 Senator Muskie. If we are sure no discharge policy
25 is the right one, then we could write the Federal Water
Quality Standard, and say that is it.

1 Senator Beall. I am not saying it is the right
2 one. I thought we would come or had come to a conclusion
3 that it was a better one, and that we could, the state could
4 move to no-discharge, it was better to move toward just
5 secondary treatment, and perhaps we should offer some induce-
6 ment for them to move in that direction.

7 Senator Muskie. The point I am making is if we have
8 sufficient reservations about adopting a no-discharge policy
9 as a national standard, then we are being inconsistent, offer-
10 ing inducement to move to such a standard, when we ourselves
11 are not ready to do it.

12 The problems involved in addition to the one Senator
13 Buckley stated, the one of economic feasibility, it relates
14 to industrial discharges more than municipal, so what you
15 are suggesting is that we relate Federal support to construction
16 of municipal waste treatment plants, and a no-discharge policy
17 relating to industrial plants.

18 I do not know whether there is a tie-in there.

19 Senator Boggs. On that same point, Mr. Chairman, that
20 Senator Beall raised, and I do not want to get off of the
21 thing about the vote, but you go back to page twenty-one, the
22 purpose where we discussed the priorities, Now, I had in
23 mind to offer for consideration when the time comes, that as
24 a first priority, we would insert the words "where feasible",
25 and then as we get to second priority and to third priority,

1 say that level of treatment, before discharge into receiving
2 waters, that will assure the attainment of that standard
3 of water quality required under Section 302(b)(2), so I
4 would say where feasible. I do not want to use the word
5 flexibility, but would meet with some reality, maybe to the
6 situation, it would encourage them to, as a first priority
7 to have a no discharge policy, if they could possibly do it,
8 but where they could not possibly do it, they would have
9 to show to the satisfaction of the Administrator it was
10 not feasible.

11 Senator Muskie. There is this point too, if the
12 incentives succeed in inducing the state to apply a no-
13 discharge policy, then its policy would --

14 Senator Beall. Mr. Chairman, I am not pressing the
15 point, but I think though we ought to offer inducement
16 for better performance, and I am not sure construction of
17 secondary treatment plants is the kind of best performance
18 we want to strive for.

19 Senator Muskie. The inducement, I would think, if
20 experience is any precedent, is that is the cheaper way for
21 the states to go.

22 Senator Beall. It may or may not be, but I am just
23 wondering if we are really offering the kind of inducement
24 that will bring about other than just construction of water
25 and sewage treatment plants.

1 If that is what you want to do, okay.

2 Senator Muskie. I guess what I am saying is if
3 we have made up our mind to no-discharge policy is the way
4 to do it, and the way to restructure this is not in the
5 grant formula, but in the whole--

6 Senator Cooper. On this, what we are finally fixing
7 in the bill, the objective, we are just seeking secondary
8 treatment?

9 Senator Muskie. I think it relates to the language
10 on page twenty-one, establishing the priorities that we
11 limit, but I do not think we are ready to drop the programs
12 of secondary treatment facilities.

13 Whatever questions we may have, at least, if there
14 are real questions among the Committee, we ought to take
15 a vote; and I think the incentive approach is not really
16 to be tied to the waste treatment program, but it ought to
17 be tied to some other part of the bill, that if incentive
18 is what we need, it should be somewhere else.

19 In any case, with respect to waste treatment plants,
20 the third priority, on page 21, is the best available
21 treatment of pollutants before discharge into receiving
22 waters.

23 That is a policy guideline that the Administrator
24 clearly has.

25 Mr. Jordan. Is it not true the way we have defined
waste treatment would include any of those three priorities

1 which would be eligible for a grant.

2 Senator Muskie. If that becomes demonstratively the
3 better way to do it, I do not think the states will need an
4 incentive to shift from one way to another.

5 They will want to get to the most effective means.

6 Mr. Jordan. I would like to ask, if I could, make
7 a plea for a lower Federal share, and that is based on a
8 conversation about having some of the states having invariably
9 been told that they each have more applications than they know
10 what to do with from the municipalities, and the inhibiting
11 factor has not been the level of the Federal share, but
12 rather the failure of Congress to appropriate them out when it
13 is authorized, and I think if we are going to conclude these
14 storm sewer problems, that with a limited amount of money,
15 with general estimates for the total program cost, everybody
16 will agree that to diminish the amount of capital to get
17 in place, by increasing the Federal share, there is no testi-
18 mony the level of Federal share is inadequate, and I feel
19 that the Committee would do well to provide something like
20 a basic fifty percent Federal grant, be increased perhaps
21 to sixty, or sixty-five conditioned upon a state grant,
22 because we are limited in our dollar amount, simply budgetarily,
23 and it will accomplish the same thing with seventy-five, with
24 three billion dollars a year, we would accomplish the same
25

1 thing with that three billion dollars if the capacity of the
2 plant were considerably greater.

3 Senator Buckley. I second that statement.

4 Senator Muskie. Well, what do you do about the
5 state matching grants?

6 If we treat state loans and state grants as we
7 agreed to, eligible for the maximum Federal grant, what is
8 going to happen to the state programs and grants, are they
9 not going to say never mind with these boys.

10 One of the reasons we increased the Federal share
11 is to continue the eligibility of states that provide loans,
12 while still giving state grants some meaning.

13 This is why we have increased, I suppose, you could
14 drop sixty to fifty-five, something like that, but basically
15 what we had to do here was either to wipe away the state grant
16 program, because that is what the effect of making loans
17 eligible would be, and then Leon tells me many state admin-
18 istrators urge us not to do anything that would wipe away the
19 state grant programs, because that is an input of important
20 funds into this program, and if you let them get the same
21 benefits from the Federal Government, by staying out of the
22 grant program, I am sure my state, which is the first state
23 to come up with a matching grant program, I am sure if we
24 do this, the Governor, the first chance he gets, he will say,
25 let's get out of this grant program and get into a loan pro-

1 gram.

2 Senator Buckley. That is not what he said.

3 Senator Muskie. I am talking about the implications.

4 Senator Buckley. He said we have fifty percent, plus
5 a special inducement, if the state gets grants--

6 Senator Boggs. Grants or loans?

7 Senator Buckley. Just grants.

8 Senator Tunney. To ethe existing law.

9 Senator Muskie. I was thinking of the inducement
10 aspect compenent being the same as the existing law.

11 Mr. Jordan. You might make it a basic fifty percent
12 to be increased to sixty, or sixty-five, if the state provided
13 ten or fifteen percent, which would leave the locality any-
14 where from twenty to twenty-five percent of the project cost.

15 I just think we would get more mileage out of the
16 dollars we would have available with a lower basic Federal
17 share.

18 Senator Muskie. Right now the Federal matching
19 is fifty-five, and if you make that Federal maximum a straight
20 fifty-five percent for everybody, which is something we
21 have already voted on, if we make that straight, you know,
22 grant, without any requirement of Federal matching, how much
23 more, if we want to produce an incentive for state matching,
24 then how much more of the Federal grant are we going to give
25 them to provide sufficient inducement?

1 Mr. Jordan. In the Committee language, you could have
2 a sixty percent basic rate, increased to seventy-five.

3 Senator Muskie. It is fifty-five percent under
4 present law, so you are talking about five percent.

5 Mr. Jordan. I would suggest reducing it to fifty,
6 but that is the basic grant, Senator.

7 You do not get your fifty-five under existing law
8 until the state--

9 Senator Muskie. We are trying to stimulate regional
10 waste treatment management, and that additional five percent
11 in Federal law is designed to stimulate communities to go
12 into regional waste management.

13 Mr. Jordan. The language we have in front of us
14 right now in that print, will provide sixty percent Federal
15 money with no state participation whatsoever, so what we do
16 in the present language is increase that to seventy-five, where
17 there is a state percent grant.

18 Senator Muskie. Which is fifteen percent more in
19 order to get fifteen percent state.

20 Mr. Jordan. I am suggesting we would get more
21 mileage out of our money by incorporating that same fifteen
22 percent incentive to a lower level, in which it would be
23 sixty to sixty-five instead of sixty to seventy-five.

24 Senator Buckley. It makes sense to me.

25 Senator Boggs. It is not cutting back on anything

1 we are doing now.

2 Mr. Jorling. No, it is not.

3 Senator Muskie. Sixty percent plus ten percent if
4 the states go to twenty.

5 Senator Beall. You must have a formula to induce
6 the states to take part, and it must induce them to have a
7 sizable program.

8 Mr. Jordan. We have an existing law, we have a fifty-
9 five percent Federal grant contribution, and twenty-five
10 percent grant, which is 80 percent Federal, and--

11 Well, what we are saying is that in another part of
12 this section, that once we buy this program, each community
13 in this Country will be self sufficient.

14 Senator Muskie. Why are we pushing revenue sharing
15 then so hard?

16 Mr. Jorling. With respect to this program--

17 Senator Muskie. What advantage is there to this
18 sixty Federal, plus another ten if the stat puts up twenty?

19 We put up sixty, and then you say the state puts up
20 twenty more, and we pick up fifty percent of the remaining
21 community cost.

22 We are talking about forty percent state, local
23 responsibility, if the state picks up half, you put up another
24 ten Federal, which gives you seventy Federal, twenty state,
25 and ten local.

1 It is a ninety-ten ratio.

2 Mr. Billings. That is on an assumption of five
3 years of obligation, and nine years of expenditure.

4 In other words, when the five years are going to
5 be authorized in this Act, it will not actually be authorized
6 from the Treasury, until about 1980, because of the phasing
7 problems in construction, commitment schedules, and so on.

8 Senator Muskie. All of these splits are pragmatic.
9 It is sixty, ten, twenty.

10 Would a ten percent additional Federal be a sufficient
11 inducement to twenty percent?

12 Senator Beall. I would think so.

13 Senator Boggs. I would think so.

14 Senator Muskie. It certainly would be enough to
15 inhibit states which are not planning to enter.

16 Mr. Billings. I suspect that some of those states,
17 to my knowledge, neither Maine nor New York considered reduc-
18 ing their programs from thirty to twenty-five percent on
19 the basis of the twenty-five percent increase.

20 This is close enough to giving them an advantage
21 to keeping the entire state grant program.

22 Well, why don't we zero in on these, without any
23 particular pride of authorship, or any firm philosophical
24 construction, I would propose, in order to respond to the
25 point made, I would propose that we reduce these figures to

1 a basic sixty percent Federal grant, be increased by ten
2 percent to seventy percent, if the state produces a twenty
3 percent grant.

4 Mr. Billings. Line eleven, that would be 75 stricken,
5 70 percent included, line 13, 15 percent changed to 20. This
6 is page twenty-three.

7 Senator Muskie. The effect of that is to reduce the
8 Federal commitment by five percent and increase the state by
9 five.

10 Mr. Billings. The estimate of cost based on the
11 reports that the Council of Environment Protection have come
12 forward with, it would be a little bit of a guess at about
13 \$20 billion Federal share, which would be available over
14 the next five years, for expenditure in the next nine.

15 Senator Muskie. Barry suggests a modification of
16 this, which really responds to something you said earlier,
17 that if the states came up with ten instead of twenty, would
18 we be willing to give them five?

19 In other words, try to crank them up.

20 Mr. Meyer. The problem is, because of some states,
21 of their particular financial problems, they will not be
22 able to find twenty percent, but they might be able to come
23 up with ten percent, so does this have to be an all or
24 nothing proposition, or can it be a sliding scale, in line
25 with a state contribution to the program?

1 Senator Beall. You are saying the Federal Government,
2 instead of giving, the Federal Government will give seventy
3 percent, and then the Federal Government will give \$2.00
4 for every dollar?

5 Mr. Meyer. No, one dollar for every two dollars.

6 Senator Beall. Right, for the remainder.

7 Senator Muskie. Up to a maximum, another ten
8 percent for the Federal Government.

9 Mr. Meyer. It is a sliding scale.

10 Senator Muskie. You would have two steps of Federal
11 supplement, five and ten, and that would require ten and twenty
12 for the states.

13 It might crank in some additional states.

14 Senator Buckley. If you want to have a real incentive,
15 you can start at the forty percent.

16 That leaves the communities with fifteen. Now,
17 any community that cannot finance that fifteen, that is why
18 we have special emergency finance help.

19 Senator Muskie. Well, that means we are reducing
20 the Federal level of support below what it now is.

21 Senator Buckley. No, we are starting at the fifty
22 percent now.

23 Senator Muskie. Fifty-five, and I do not think we
24 want to be in a posture of reducing it.

25 Senator Buckley. Fifty-five for grants.

1 Senator Muskie. In thirty states, the Federal
2 commitment is fifty-five percent.

3 Senator Buckley. With grants.

4 Senator Muskie. They are already providing. The
5 states already have the programs in effect, so they are being
6 given fifty-five percent Federal support.

7 Are you suggesting we will reduce the Federal
8 support?

9 Senator Buckley. If they continue the grant program,
10 they will get sixty-five.

11 Mr. Billings. Fifty-five plus twenty-five is
12 eighty.

13 I see. We go from thirty to fifty-five in the present
14 program, with twenty-five for the state, and you are suggest-
15 ing we go from forty to sixty-five, the basic grant will be
16 forty percent, going up to sixty-five.

17 Senator Buckley. Twenty, and that means fifteen for
18 the locality.

19 Mr. Billings. The states do not match communities.
20 They will come up with or to sixty?

21 Senator Muskie. That is states where the states
22 do not match, we may be increasing the community load?

23 Senator Cooper. The information in the past, does
24 it really go against the poorer states, and the poorer
25 communities, this program, offhand it would seem to me would

1 more likely than be accepted by the richer communities.

2 The point is that there may be states and communities
3 that are richer and others are poorer, and the poorer may
4 be adversely affected.

5 Senator Muskie. I am not sure now who are the richer
6 states.

7 Let me get Senator Buckley's proposal clearly in
8 my mind.

9 Senator Buckley. You start with fifty, plus ten,
10 plus another, so you have this to give you the dual
11 incentive, this would be sixty-five, twenty for the state,
12 and fifteen for the local.

13 Senator Muskie. No state, and fifty local?

14 Senator Buckley. If the state goes ten, the Federal
15 goes ten.

16 Senator Muskie. And the local goes down to thirty?

17 If the state goes an additional ten, the Federal
18 Government goes for an additional five, and the the local
19 is fifteen, so that your maximum, you have solid incentives
20 to the state to go two different stages of contribution.

21 The ultimate will be fifty-five Federal, twenty
22 state and fifteen local.

23 The localities start out substantially better than
24 they are in the existing law.

25 Senator Tunney. What would your base be?

1 Senator Buckley. Fifty.

2 Senator Tunney. The maximum under your formula would
3 be sixty-five for the Federal Government?

4 Senator Buckley. To complete the objectives of
5 getting the Federal dollar to stimulate a larger amount
6 of work.

7 Senator Boggs. I see.

8 Senator Buckley. You will have, number one, usage
9 charges to cover the investment, number two, those communities
10 will have a special mechanism to help them if there is an
11 emergency.

12 Senator Muskie. How about this formula? I am
13 concerned, frankly that the states do not match, and I think
14 in those cases, the local contribution ought not to be more
15 than fifty percent, so I would be reluctant to agree to that.

16 But then above that, how about just an additional
17 dollar of Federal money for every dollar that the states
18 would give, up to a maximum of twenty, so the local grant would
19 be ten, so that you would have an additional dollar, so that
20 you are talking about fifteen, fifteen, which would be--

21 Mr. Billings. It would be to give the states a
22 flexibility to move within that fifteen percent range without
23 losing everything.

24 Senator Muskie. I think there is some advantage
25 to that sliding scale.

1 Senator Boggs. That keeps the present formula at 75
2 maximum.

3 Senator Muskie. You start out with a figure that
4 you think represents, the minimum load that you ought to
5 ask municipalities to carry, if their states do not help
6 them.

7 Should that be forty percent, should it be forty-
8 five percent, what should it be.

9 In the original bill, we said it should be twenty-
10 five percent.

11 The Federal grant should be seventy-five, because to
12 ask the communities to put up all twenty-five percent is
13 unrealistic.

14 Now, we have increased it in the bill before us, and
15 forty percent was the minimum local load, and that is pretty
16 heavy.

17 I really do not think we ought to increase it forty
18 percent.

19 That means the basic Federal would have to be sixty
20 to start with.

21 Any change in that sixty, imposed the burden not on
22 the state, but on the communities, that is why I am for the
23 sixty, because with the record of the failures of the states
24 in some cases, in twenty states they did nothing.

25 Now, I have got to be concerned about those communities,

1 so I am rather strong for that sixty basic Federal, so now
2 what extent are you willing to increase the Federal share
3 to get some participation, and further reduce the burden on
4 the localities, and if you want to get the states in twenty
5 percent on the dollar for dollar basis, then you would have
6 to increase the Federal Government twenty percent, which
7 would mean a hundred percent, and no local contribution.

8 Maybe locals ought to put up something. If you
9 want to take ten percent as a minimum local, what you are
10 talking about on a dollar for dollar basis is \$15 additional
11 Federal and an additional \$15 for the state.

12 Or maybe you could do it on a one for two basis,
13 that would get you the same result.

14 You would end up with ten percent maximum, with
15 ten percent additional Federal and twenty percent state.

16 It seems to me these are the variables you could
17 put in.

18 The dollar for dollar might be a strong incentive.

19 Senator Cooper. I am interested in the poorer
20 communities.

21 I do not wish to complicate it, but I think I would
22 be concerned with that.

23 I would say to start with a minimum of five.

24 Senator Muskie. In other words, the states put in
25

1 a minimum of five, and then dollar per dollar to fifteen, so we
2 are talking about a sixty percent basic Federal, another five
3 percent Federal for a basic five percent state, and then dollar
4 for dollar as it reaches up to fifteen percent?

5 It would take us up to seventy-five.

6 I think that is reasonable.

7 Senator Cooper. Otherwise the communities will be
8 paying forty percent.

9 Senator Muskie. I think we have to be considerate
10 about that.

11 Some states are up tight, they think they are, and
12 we still want the program to go.

13 Well, I suppose we will be moving around with these
14 percentages until the bill comes out of committee.

15 The proposal is that we have a basic sixty percent
16 Federal grant, be increased by another five percent,
17 if the states match five percent, and then to be increased
18 dollar for dollar, up to a maximum of seventy-five percent
19 Federal.

20 We have not got the language for that.

21 If that proposition is clear, then I think maybe we
22 are ready for a vote on it.

23 Senator Tunney. The additional ten percent, dollar
24 for dollar, whether the local government puts up, or the
25 state?

1 Senator Muskie. It has to be the state.

2 Mr. Billings. The amount for this grant should be
3 sixty percent of the reasonable cost?

4 This will read except that the amount of such grant
5 shall be increased on a matching basis to seventy-five percent,
6 if the state agrees to pay by grant at not less than five
7 percent of the cost of the project.

8 Senator Muskie. Let me state it my way again.

9 We will get to the language afterwards.

10 Sixty percent Federal minimum, and then an additional
11 five percent if the state puts up five percent, and then
12 an additional dollar of Federal to match each dollar of the
13 state up to a maximum state contribution of fifteen percent
14 that we will match.

15 Now, above that, the states would be putting up the
16 money for free, which might not be a bad experience.

17 How does that sound?

18 Ready for the vote on that.

19 We are waiting for Senator Buckley.

20 Senator Beall. How many states are we now giving
21 to?

22 Mr. Billings Twenty-two states.

23 Mr. Jorling. Basically, they will be able to keep
24 their same program, but to spend the money further.

25 Senator Cooper. You are worried about the lack of

1 incentives for the states.

2 This might induce them to take action.

3 Senator Beall. They are probably legislatively
4 committed, and it would be very difficult for them to reduce
5 their contribution.

6 Senator Muskie. It would seem so.

7 Senator Beall. Although in New York, you could come
8 up with a total of contribution to thirty.

9 Senator Muskie. Maine would go up to ninety.

10 Mr. Billings. It would go up to 105, but as it was
11 pointed out, most of the states have a program, an authorized
12 outside limited program.

13 This would just make it possible to spend that money
14 further to more communities.

15 Senator Boggs. There are twenty states that do not
16 do anything now.

17 Mr. Billings. Fifty-four jurisdictions are under
18 this law, twenty-two have matching grant programs, several
19 have matching loan programs, and the other twenty-five have
20 no programs.

21 Senator Boggs. And this would be getting at that.

22 Senator Muskie. I don't know if you have this point, in
23 the cases of the states, where we would be forcing them to
24 reduce their contribution, two states, for them it would be
25 up over 100 percent of cost.

1 Maine is one of them. The fact would be that the
2 basic Federal of sixty, and then with a supplement of fifteen,
3 and the thirty percent that Maine now provides, that would
4 be 105 percent, so that they would presumably reduce their
5 state contribution by five percent.

6 What is the other state?

7 Mr. Billings. New York.

8 Senator Muskie. What is theirs?

9 Mr. Billings. Thirty. New Hampshire pays up to
10 forty percent of the whole treatment works under certain
11 conditions.

12 Senator Beall. What will these states do?

13 Now, the Federal Government is contributing fifty-
14 five, their contributions go on, that is 85, and the local
15 government is contributing fifteen percent.

16 Will they keep fifteen percent local contribution,
17 or will they assume the local contribution?

18 Senator Muskie. I cannot imagine Maine, that they
19 would reduce it by the five, but if they did, they would
20 not reduce it by anymore than that.

21 Senator Beall. The amount of money will be increased
22 considerably under this program.

23 Senator Muskie. The total dollars they put in will
24 not be reduced.

25 It is just their share of the particular projects will

1 be reduced, but what I like about it is the effect to
2 reduce the burden on the localities, and that is what we ought
3 to be doing.

4 Call the roll.

5 (Whereupon, the roll call vote was as follows:

6 COMMITTEE INSERT:
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1 Mr. Meyer. We have nine affirmative votes, no negative
2 votes.

3 Senator Muskie. All right.

4 I think we ought to stay on the same subject, go
5 to number six, which is the funding.

6 It is page thirty.

7 Leon tells me that what we must provide to implement
8 what we have just done is \$2 billion in the first year, which
9 is what the Appropriations Committee has done and already
10 approved, and then \$20 billion more at the rate of \$5 billion
11 a year.

12 This does not include that reimbursement feature,
13 which would have to be a separate authorization, which would
14 have to be distributed.

15 Now, remember, this is contract authority, not
16 appropriations, and so this would set the rate at which the
17 contracts are entered into, the expenditure presumably would
18 be stretched out over nine years.

19 Mr. Billings. Mr. Chairman, it would give you a \$20
20 billion authorization, and obviously the Congress will be
21 programmed somewhere in this area.

22 Senator Muskie. Is this authority accumulative?

23 Mr. Billings. Yes.

24 Senator Muskie. Another suggestion is that instead
25 of making it two, and then five, five, five, is two, three,

1 four, five, six.

2 The rationale of that is \$2 billion less, would be in
3 three years, we would be reviewing it in any case, and these
4 authorizations, they would be accumulative, and in the 76
5 fiscal year we would re-adjust it.

6 Senator Cooper. I think to get the thing started,
7 we should forward it for the Administration's recommendation.

8 Or, I would say, the recommendation we have from
9 them, it should be adopted, changing the liquidation figures,
10 make it a four-year program instead of a five-year program, and
11 then if it should be adopted, and then the liquidation should
12 be changed.

13 Senator Muskie. That is a total of \$8 billion.

14 Mr. Billings. The Administration's proposal was
15 \$6 billion as opposed to \$8 billion.

16 Senator Cooper. That is right.

17 Senator Muskie. There is also some contract
18 authority.

19 There is no disagreement on contract authority.
20 Well, I suppose the question that is involved here is guesses
21 as to the pace in which states and communities respond to the
22 incentives that we have written into the matching program, to
23 the extent to which they will be funded finally.

24 What do we have on hand? What is in the pipeline?

25 Mr. Billings. The Administration estimates that the

1 present backlog is approximately \$12 billion, which funded
2 at a rate of fifty percent would require expenditure of \$6
3 billion over the next three years Federal.

4 Senator Muskie. Just to take care of the present
5 backlog.

6 Mr. Billings. That is their anticipation over the
7 next three years.

8 That does not include any allocation for separation of
9 storm and sanitary sewers, or treatment of storm water over-
10 flows, nor does it include the national water standard, nor
11 does it include the provision of treatment for any unsewered
12 population, as I understand.

13 Senator Muskie. Does that include reimbursement?

14 Mr. Billings. I am not sure how much. It would
15 include some reimbursement.

16 Senator Muskie. It would include reimbursement that
17 is already in the book?

18 Mr. Billings. There is a dispute of how much is
19 actually owed.

20 Senator Muskie. Also, they do not seem to account
21 the fact of the stimulus to the program that we are trying
22 to finish this job in five years.

23 Whether or not we do, depends on the extent to which
24 localities and states are willing to fund that objective, and
25 the only evidence I guess we have of that is the backlog, that

1 is pretty sizeable, in the light of the total estimates of
2 needed.

3 And then that backlog, it has been produced in a climate
4 of inadequate Federal funding, and the absence of the incen-
5 tives that we have provided here, so it would seem to me you
6 would have to reasonably conclude that that figure is going
7 to be increased substantially as a result of the passage of
8 this bill.

9 The funding authorizations proved to be inadequate.
10 I think --

11 Senator Boggs. What I was thinking about, Mr.
12 Chairman, if the funding was fifty, fifty, fifty percent
13 Federal and fifty percent local, then the \$2 billion would
14 bring a cost of \$4 billion a year.

15 Now, we have got the maximum Federal funding up to
16 seventy-five percent, and we expect that in all probability
17 would reach that in most cases, so that means, as I think
18 about it, to get the program up to \$4 billion a year program,
19 we have got to come up to \$3 billion Federal funds available,
20 and \$1 billion local, which gives you \$4 billion, and I
21 am sensitive about my own personal feeling, of whether it is
22 worth it, about going too many years.

23 I would like a three-year approach, and then review
24 it, but enough money to be sure that we will get a sizeable
25 substantial job done in each of the years, without adding to

1 or increasing an inflationary thing which just eats up the
2 whole program anyway, and I would like to suggest the \$3
3 billion, the \$2 billion for 72, and then for three years after
4 that, \$3 billion a year.

5 Two years after that, a total of \$8 million, and
6 then in addition, we would add a billion and a half, for
7 reimbursement.

8 Senator Muskie. Now, that does not take into account
9 anything for storm water overflow, it does not take that into
10 account, or does it?

11 I do not think it does, so those two are substantial
12 items, and then one final point, that is that as we get
13 to water quality standards, and we are talking about deadlines,
14 and we want to bear in mind whatever we do on funding, we have
15 to take into account deadlines.

16 We set deadlines that we are not prepared to fund
17 from the Federal standpoint, we are being unrealistic and
18 unfair, and we are talking about a 1980 deadline, and to
19 achieve that is going to, well, you are talking about a
20 level of funding that we are talking about here, because
21 we are talking about this \$20 billion, and we are talking
22 about a five-year contract authority, but on a nine-year
23 expenditure, and that takes us to 1980, and to the extent--

24 Senator Cooper. May I go back just a moment?

25 As I understand this authorization, it is not based

1 on inclusion of storm water overflow, so we are going back
2 to dealing with the same kind of facilities as before,
3 looking at the Administration's recommendation, it is
4 contemplated spending \$12 billion.

5 That is really on a fifty percent basis.

6 What we have done is start out on a base of sixty
7 percent, which would increase the \$12 billion, and that
8 does not take into consideration whatever the amount that
9 might be added, because of the incentive feature.

10 Senator Muskie. These are accumulative.

11 Senator Cooper. We cannot tell what the Federal
12 share of that will be, but I think you can estimate it on
13 the basis of sixty percent of the Federal share, and I will
14 propose two and a half billion for a three year program.

15 Mr. Jorling. Two points, it is my recollection, the
16 Administration has said that their program was \$12 billion
17 in three years, it is based on the assumption there will be
18 a ten to twelve percent cost of inflation in that program
19 period per year.

20 They feel anything beyond four billion, it may
21 not be within the capacity of construction to do that, and
22 the cost of inflation would become quite extensive.

23 The second point is on the storm water situation, Doc-
24 tor Schaefer, who seems to put a lot of faith in it, has said
25 an average, if you increase a plant by fifty percent to treat

1 this, I do not know what kind of costs that cranks into the thing,
2 but if his figures are correct, \$25 billion may be excessive
3 in treating storm water runoff.

4 Senator Muskie. I do not think we are prepared to give
5 \$25 billion for storm water runoff.

6 What you have got here, you see, these figures are
7 out of it.

8 The estimate is 22.4 billion, municipal treatment
9 sewer systems, over the next five years.

10 Let me read this.

11 This is from the Council on Environment Quality.

12 The Council on Environmental Quality's upcoming
13 report to the President will estimate that it will cost
14 \$105.2 billion to meet all pollution control standards in
15 the five years ending in 1975.

16 The figures were compiled from a combination of
17 surveys done by the Environmental Protection Agency, McGraw-
18 Hill and the National Industrial Conference Board.

19 The figure which CEQ staffers concede is very much
20 an estimate includes a total of \$43.5 billion for dealing
21 with solid waste, public and private, \$38 billion for water
22 pollution and \$23.7 billion for air pollution.

23 The figure is considerably higher than those cited in
24 many other studies largely because an estimate for all
25 solid waste--from municipal refuse to industrial sludge--is

1 included.

2 This was an area where hard statistics were especially
3 difficult to come by, CEQ sources said. Among the largest
4 individual items are \$22.4 billion for municipal sewage
5 treatment systems, \$16.1 billion for private source air
6 pollution and \$12 billion for private manufacturing water
7 pollution problems.

8 The report is expected to be sent to the President
9 within the next few weeks.

10 This is probably low, when you consider we have
11 not gotten inflation under control yet, and it is as good
12 a figure we have to the present time.

13 Does that take into account storm water?

14 Mr. Billings. You would have to assume it does.

15 Any project like this that goes that high would
16 have to include it.

17 Senator Muskie. It certainly does not include all
18 storm water because the estimates of storm water control are
19 astronomical.

20 Mr. Billings. The figures we have from the United
21 States Conference of Mayors is of \$33 to \$36 billion for five
22 years for municipal programs, including \$8 million worth of
23 storm sewer.

24 Senator Muskie. That is a higher figure than this
25 one.

1 The unknown quantity of course is how fast this
2 program will gear up, and the stimulus of this bill, and that
3 is pretty much a guesstimate, but the advantage of course
4 to dealing with contract authority is that you do not have
5 to move any faster than the states and localities move, whereas
6 if you set too low a figure, we may again be in a position
7 where we are not ready to take the application to move forward,
8 and they will just have to form a line, so how do you draw
9 a happy medium between the two, and this is always the
10 puzzle of these authorization bills, but since we are talking
11 about authorizations, it does not have to be spent, unless
12 the initiative is taken.

13 It seems to me the sensible course, since we are
14 using an admittedly conservative figure, is to gear our
15 figures to that figure.

16 Mr. Billings. What you need is a total figure?

17 Senator Muskie. Yes. Let's get that figure.

18 Senator Boggs. Mr. Chairman, I have got a 12:30
19 engagement.

20 Senator Muskie. I have a lincheon appointment. Let
21 us recess until 2:00 o'clock.

22 (Whereupon, the Executive Session was recessed at
23 12:30 o'clock p.m., until 2:00 o'clock p.m.)

AFTER RECESS

Senator Muskie. The Committee will be in session.

We were considering before the recess the authorization portion.

The Staff has been asked to produce figures on the construction that has taken place, and of the existing programs.

Mr. Billings. The staff attempted to obtain some figures, but unfortunately, they observed a rather vigorous lunch schedule, and they will be forthcoming with those figures very shortly.

Mr. Jorling. They are supposed to be calling through with those.

Senator Muskie. Well, then, why don't we take that up again when we get those figures, because I think Senator Cooper feels that information is important, so why don't we go to the user charge question.

What item is that?

Mr. Billings. Item four on the agenda, page one. Of the bill it is page 27, lines 13 to 25.

Mr. Chairman, the staff is distributing some language to rectify some oversight on the user charge section, to reflect the recommendation of the last executive session at which this was discussed, and this is dealing with user resources.

1 Senator Muskie. What we have done, what page
2 is that?

3 Mr. Billings. Page 26, 27, the issue which is out-
4 standing is referred to, Mr. Chairman, as the treatment of
5 that share of the projects costs, which is recovered from
6 industry, and attributable to the Federal grant, and
7 the issues are, one, is recovery of the industrial share,
8 Federal costs, two, if such is required, does it remand to
9 the Treasury, and, three, or somewhere else, and, three, if it
10 does, is it earmarked, or does it just go to the general fund.

11 Senator Muskie. Let me point out my own view of this,
12 just to put the subject before us for discussion.

13 My own view at this point is that we had some consi-
14 deration, as you remember last time, is that the construction
15 costs and industrial capacity should be covered by the
16 industrialists.

17 With respect to the Federal share, that ought to come
18 back to the Treasury, the general treasury.

19 With respect to the local share and the state share,
20 it seems to me that ought to be left to whatever the state
21 law provides, but I think it ought to be in this bill that
22 industrial capacity ought to be billed, and the responsibility
23 for the repayment of its costs ought to be imposed on the
24 industries.

25 I have not been able to persuade myself of any sound

1 reason for earmarking the Federal share.

2 We are undertaking with this bill to finance this
3 program totally.

4 I do not think we should use this as an indirect tax
5 upon industry, as a way of making industry support some of
6 the public side of the program.

7 My view of this is that the industrial user charge
8 is that it is simply a way of bringing industry into municipal
9 waste treatment plants, that serves their interest, and
10 serves the public interest, and that they are served by
11 reason of the fact that the per capita costs are carried
12 in the first place by the public program, but that they
13 ought to reimburse the public treasury performing that
14 service.

15 I do not think we ought to mix it up with some
16 complicated formula for diverting the public funds recovery
17 to some other use.

18 I think that is just a complication, so that is
19 my proposition, and I would like to put it before you
20 formally in that form, and then invite discussion.

21 Senator Boggs. Payment is being faced over a period
22 of time, depending on agreement in each individual case?

23 Senator Muskie. Yes.

24 Senator Boggs. I do not know if that is clear in
25 the language.

1 Senator Muskie. All that industry has ever asked
2 for in this connection is to provide the capital funds to
3 build the project.

4 They have never asked for subsidization of any
5 kind.

6 They are not being required from this proposal to
7 raise the money out of reserves, so what I am saying is
8 that I think out of it all, with the minimum subsidization,
9 I guess that they are getting, this would appear to be a
10 sufficient incentive to meet the industrialists that we
11 have discussed.

12 Mr. Billings. The comments on the bill go to that
13 point, to the extent that the industrial user charge reflects
14 the cost of treatment.

15 They have no objection to the extent that there is
16 any charge in addition to the cost of the treatment, including
17 operation, maintenance, replacement, and repayment of
18 Federal share.

19 There is little if any objection, if I can recall
20 that.

21 Senator Buckley. Has that increment been removed,
22 adding something to the cost?

23 Mr. Billings. The language, paragraph (B), line
24 6, page 27, it determines the adequacy of charges imposed
25 on classes and categories of users reflecting all factors

1 that influence the cost of waste treatment, including
2 strength, volume, and delivery flow rate characteristics of
3 waste.

4 There is no language relative to incentives to
5 reduce waste or added costs and so on.

6 Senator Muskie. The effort is to make them pay
7 for that portion of the load that they carry?

8 Mr. Billings. That is correct.

9 Senator Buckley. One thing that concerns me, because
10 the Administrator is to set up all kinds of options, different
11 models to the states and localities.

12 Why not let the locality work out their own procedures,
13 and so on for these charges, and with the Administrator having
14 rights to knock out anything that is inappropriate?

15 Senator Muskie. What have you got in reference
16 to that?

17 Senator Buckley. We talked about within ninety days,
18 the Administrator shall promulgate regulations applicable to
19 payment of waste treatment costs by industrial and non-
20 industrial recipients of waste treatment services which
21 shall establish (A) classes of users of such services,
22 including categories of industrial users; (B) criteria
23 against which to determine the adequacy of charges imposed
24 on classes and categories of users reflecting all factors
25 that influence the cost of waste treatment, including

1 strength, volume, and delivery flow rate characteristics of
2 waste; and (C) model systems and rates of user charges typical
3 of various treatment works serving municipal-industrial
4 communities.

5 It seems to me that is sort of, I do not see why, so
6 long as reasonable charge systems are adopted with localities,
7 why they should have to conform with whatever the Adminis-
8 trator comes up with.

9 It seems to me it is contrary to the policy as
10 declared in the first part of the existing Act, where it
11 says it is hereby the policy of Congress to recognize the
12 primary responsibilities of the states, and so forth.

13 Senator Muskie. I think that there are two points
14 to be made, one, with respect to the public interest, I
15 think it is in the public interest to assure, one, that
16 the user charges are adequate, that is operation, maintenance,
17 replacement, operating costs, two, that the burden is
18 equitably spread out among the classes of users.

19 There is pressure especially in small towns that you
20 give direct subsidies to those local industries.

21 This is evident to the property taxes, and there
22 could be that kind of pressure on this kind of thing, and I
23 think it is in the public interest to assure that the distri-
24 bution will not be burdened on one group.

25 That is the first point.

1 The second point, from the point of view of the user,
2 I think he is better served by this kind of stand, the guide-
3 line as to the imposition, and in an ad hoc case by case
4 review of the program that is set up, and I think if you
5 tell communities just what it is that the kind of standards
6 they have got to help achieve, I think it saves time, it helps
7 them to respond I think more efficiently, and maybe more
8 speedily.

9 All we are asking is that the classes of users that
10 there be a description of classes of users, that the adequacy
11 of charges here, as they relate to the cost of treatment, and
12 so on, be reflected on the user charges.

13 May I say, in addition, that there is something else
14 to all of this, we have been pressured from time to time to
15 adopt a system of effluent charges, as a way of controlling,
16 not only controlling water, but also recovering its costs from
17 the polluters.

18 Now, the language in Subject (B) is designed to
19 take some of the steam, of whatever it may be, on the floor
20 from those who are urging to put this monkey into the matter
21 on the industrial back, by making it clear in Capital (B), that
22 we expect industrial users to bear the cost of this program,
23 based upon what they contribute to pollution.

24 I think that this may help to take some of the steam
25 out of whatever drive is made to give them the charges, and

1 I am sure that an amendment will be offered on the floor.

2 Senator Proxmire will introduce the amendment.

3 Senator Buckley. I am not suggesting, but rather
4 requiring the states come up with their own regulations, and
5 so on, and then the Administrator then would have the option
6 of knocking out anything that is not proper.

7 Senator Muskie. Would it help if we used the words
8 issue guidelines rather than promulgate regulations?

9 Senator Buckley. I think that would help.

10 Senator Muskie. I would have no objection to that.

11 Senator Buckley. Yes, this would be a help.

12 Senator Muskie. Is there any objection to that?

13 Senator Cooper. If there is nothing in the bill
14 that either the industrial user or the municipality from
15 deciding that the industrial user should pay his share,
16 fine.

17 The second question is that of applicable costs of
18 construction, that finally is determined by the Adminis-
19 trator?

20 Senator Muskie. Yes, I think so.

21 Mr. Jorling. Final determination is done by the
22 Administrator.

23 We received many comments from industry, particularly
24 that they hoped to go into municipal systems with compatible
25 wastes, and that they would comply with pre-treatment, but the

1 municipalities in some cases refused to accept them, and they
2 thought it would be appropriate if it is proper waste manage-
3 ment, if they had compatible wastes, that the community
4 receiving a grant under this program be required to accept
5 it, and we had required in an earlier subject, in an earlier
6 subsection which reads that the applicant agrees to and will
7 accept the treatment of any industrial wastes, and so on.

8 So that this would in effect deny any municipality
9 the right to refuse industrial wastes in its area only if
10 the wastes were incompatible.

11 Senator Boggs. And if they were getting a Federal
12 grant?

13 Mr. Jorling. If the community was getting a
14 Federal grant, yes.

15 Senator Cooper. To provide it another way, then
16 the industrial user could make a proper case with a proper
17 showing?

18 Mr. Jorling. Yes, to require the community to receive
19 the waste, this would require them to receive industrial
20 wastes which are compatible, but it also is tied to the next
21 section which is sort of correlary, that if an industry
22 indicates it has compatible wastes it wants to put into
23 this system, that it requires a contractual commitment from
24 that industry to pay the portion of the costs attributable to
25 that industry's utilization of the project, and as long as

1 the industry does not object to having one with the other.

2 Senator Muskie. The commitment would cover the
3 life of the project?

4 Mr. Jorling. Yes.

5 Senator Cooper. I see one problem on prior require-
6 ment.

7 If you have a small community facility structure,
8 which may be suitable to that community, then you would
9 require almost construction of a new facility, and in another
10 section, the user, prior to insure that such charges shall
11 be made, will not only take care of all operation and main-
12 tenance, but replacement of additional future treatment, I do
13 not know what that means.

14 Senator Boggs. Is that the sinking fund?

15 Is that what you are referring to?

16 Senator Cooper. Whether all communities will be able
17 to do that, I do not know.

18 In this case where they vote bond issues for construc-
19 tion, the user charges are included in adoption of the bond.

20 I think the condition of the prior agreement, one that
21 you would accept all of the industrial users might be charged,
22 it might be changed to read an industrial applicant could
23 submit an application, and then let that be reviewed by the
24 Administrator.

25 That will give an opportunity to the community, and

1 the applicant to present their cases, whether or not it would
2 be possible to stand all of these charges that will provide
3 the sinking fund to meet these questions of operation and
4 maintenance, replacement of existing facility, new facility.

5 Senator Muskie. You have a situation where neither
6 wish to participate in a combined plant, even though they
7 are compatible wastes, and the other two situations, where
8 the industry is affirmative, and the town is negative, or
9 the reverse.

10 Do we want to adopt a policy that in all cases, there
11 must be combined plants constructed, is that the intent of
12 the language, even when there is a case where neither want to
13 participate?

14 Mr. Jorling. The intent of the language is to
15 provide in the section the three alternatives, where the
16 industry wants to have its wastes treated through a municipal
17 system, assuming it is compatible, they will agree to pay the
18 portion of project costs which are applicable to such waste
19 load.

20 If they do not want to be confronted with a community
21 that will resist--

22 Senator Muskie. What is the public argument?

23 Mr. Jorling. Basically it is better to treat as much
24 of a waste load in a single system, than to have multiples
25 in great numbers.

1 Senator Muskie. Then you should cover all three
2 situations.

3 Mr. Jorling. I think the other one is a little
4 harder to address, that is where an industry is resistant.

5 There are ways in Section 209 where you have a
6 regional system, the industry has to be incorporated into
7 that system.

8 Without such a mechanism, you would have to use some
9 kind of device implementation plan by requiring them to
10 discharge separately to go into a municipal system.

11 Senator Muskie. If there is an overriding public
12 interest, wherever they are compatible, that is an overriding
13 public interest, then we should provide for all three cases,
14 and why should we do so, and only when the industrial polluter
15 is the applicant.

16 Is the industrial polluter the only one going to serve
17 the public interest?

18 I think there is some sense to what Senator Cooper
19 suggests, when there is a compatible situation, that that
20 ought to be before, and the community and state agency, they
21 should decide what the best public interest answer is.

22 If it is a combined treatment plant, it does not
23 seem to me it is relevant, whether or not the initiator is the
24 industrial polluter, or the community, and even in the case
25

1 where neither want it, should not the decision be made in the
2 public interest, that is, in terms of a sensible waste manage-
3 ment for the region?

4 SDoes that make sense, or am I talking too theoretical?

5 Maybe in some cases it may be efficient, and in others
6 it may not be.

7 Senator Cooper. They may not agree among themselves,
8 then for joint users, the Administrator could determine the
9 facts.

10 Senator Muskie. You might have this kind of a situa-
11 tion in a small town, we had an industry whose future is very
12 much in doubt, and there are a lot of industries that are
13 in that condition, so would you allow this kind of town to
14 build a plant with an industry that is in doubt.

15 It might make sense to force them to make their
16 economic decisions earlier than they might otherwise do.

17 There are all kinds of factors that come into a
18 decision.

19 I do not know whether you want to say it, but I
20 think that every situation ought to be somehow tested from the
21 public interest point of view, in some fashion.

22 Well, we must recess for a vote.

23 (Whereupon, the Committee was in short recess at
24 2:30 o'clock p.m.)
25

1 Senator Muskie. The Subcommittee is back in order.

2 May I suggest a formula to this compatible waste
3 problem.

4 It seems to me, by and large, the economics of each
5 situation will dictate the answer, and we ought not to try
6 to in this legislation outline it.

7 Our interest should be to make that option available
8 clearly, without indicating what the answer should be, so the
9 staff suggests this language on page 25, line 3.

10 This is paragraph 5 in parenthesis, that such works,
11 and then insert these words, to the extent practicable, would
12 provide effective treatment of all compatible wastes generated
13 in the area to be served by such works prior to discharge
14 and so on, and then strike out all of the next paragraph six,
15 lines eight to fourteen.

16 Now, that does not impose a decision on industry, it
17 does not impose a decision on the municipality, but it makes
18 a strong suggestion that this option be considered and
19 weighed.

20 I think the economics of the situation will dictate
21 the answer.

22 Senator Cooper. How would the question arise before
23 a person makes a decision?

24 Senator Muskie. It would have to be made by agreement
25 of the municipality and the industrial polluter.

1 If they did not agree you would have no agreement.

2 Senator Cooper. I talked with Art Baker, and I
3 questioned whether we should impose this on the industrial
4 user.

5 He said he disagreed, that if we do not have some
6 procedure to require ten years from now, you will have two
7 systems, and it will not be compatible, and instead of having
8 one system to which we adjust, and make new facilities,
9 changes, and so on, that you will have two systems.

10 Senator Muskie. Let me call to your attention this
11 additional language which bears upon that, on top of page
12 24, which is the beginning of that section.

13 You have this language there.

14 Before approving grants for any treatment works under
15 section 202 the Administrator shall determine, and then
16 including the language I just read, shall determine where
17 applicable to provide the effective treatment to all compatible
18 treatment be served by such wastes.

19 That enables him to raise the question, explore it
20 exhaustibly, but he can certainly make his influence pretty
21 heavily felt.

22 Mr. Meyer. The requirements of the limitation plan
23 will set effluent limitations, so from the industrial side,
24 they have an option to make a choice, and with the investment
25 we are required to make, we can do it better or cheaper, or

1 if the requirements are such that we want into the municipal
2 facility, the municipality can make the decision if it does
3 not want to render service to the industry, it can render
4 to others.

5 Senator Tunney. Does it not also have a requirement
6 that the implementation plan would have to agree with the
7 city's position, or with industry's position, as with the
8 Administrator, before any money was given, so you have got
9 a good cross reference there, it seems to me, a free market
10 test, as far as industry and the municipalities are concerned,
11 and then the state's implementation plan, and the Administra-
12 tor in his review proceed to decide whether they agree to a
13 decision made lower down the line.

14 Senator Muskie. There is a strong economic incentive
15 to bear upon the industry to participate, because public
16 monies will be financing the cost, so there will be a strong
17 incentive to give a positive approach without mandating it.

18 Senator Buckley. The original problem was the
19 willingness of the municipality to accept the industrial
20 waste.

21 Senator Muskie. I do not know the original, but the
22 question surfaces with the three situations, where industry
23 is favorable, the reverse, and then the other where neither
24 is interested, and I think it is difficult to anticipate what
25 the right decision may be in every instance.

1 I think that whatever pressures are generated, that
2 are generated in the direction of building compatible plants,
3 without mandating it, I do not know that you could do any
4 better than that.

5 Senator Cooper. I wonder if the Public Service
6 Commissions in the states, whether they have jurisdiction,
7 whether that jurisdiction extends to determining whether
8 the facility should be inter-connected or not.

9 Mr. Billings. In terms of waste matter?

10 Senator Cooper. Yes.

11 Mr. Billings. Not in many instances to my knowledge.
12 There may be a few, but in general they are limited to
13 traditional gas, electric, railroad type things.

14 Senator Muskie. Ours has responsibility over the
15 rates charged by sewer districts, but they have nothing to
16 do with the actual thing.

17 Senator Buckley. They can bring pressures to bear.

18 Senator Muskie. If they had capability of monitoring
19 this thing, but I do not think we want to invite them to
20 get involved.

21 Senator Cooper. One last question.

22 Who determines a dispute?

23 Senator Muskie. I suppose the Administrator would.

24 Mr. Meyer. If you go back to the top of page 24,
25

1 it says before approving grants---

2 Senator Muskie. What he is asking now is whether
3 or not there are procedures for the situation in which there
4 is a dispute over the question if it was not resolved by
5 agreement.

6 Senator Cooper. I presume the Administrator
7 would resolve it.

8 Senator Muskie. Before approving grants, he could
9 make it a very tough and sticky policy, but I would be
10 surprised if he did.

11 Shall we accept it in that form at this point?

12 Senator Cooper. Yes, at this point.

13 Senator Muskie. We will not take a roll call vote on
14 this at this point.

15 We will just accept it in this form and report it
16 in this form to the full Committee.

17 Now, does that round out that section?

18 Yes, the one question that we opened the discussion
19 with, and that was what to do with the proceeds of the user
20 charges recovering the Federal portion of the capital costs.

21 As I indicated earlier, my own preference is just
22 to recover them, and send them to the Federal Treasury as
23 unrestricted funds.

24 Senator Beall. I had suggested earlier, Mr.
25 Chairman, that we should give the money to the localities.

1 I think the authorization would be made to provide
2 very unbalanced distribution in the funds, and I am still
3 wondering if one of our objectives is to promote self-
4 sufficiency.

5 It might be a good ideal to let the states keep
6 control of the money, that is, retain to repay the Federal
7 portion of the costs, and with some sort of direction that
8 they use it for their more pressing projects, where they do not
9 perhaps have the tax base that is necessary for the local
10 governments to move ahead on.

11 Senator Buckley. Is not the theory of this that
12 the Federal Government will make advances, and that the
13 advances will be repaid?

14 Senator Muskie. I think it is a straight-line thing.
15 We just got through talking about the decision, whether or
16 not a compatible plant should be built in the first instance.

17 If the state has a stake in recovering the Federal
18 share of the costs, then it is going to put its weight behind a
19 compatible plant, even though there are other considerations
20 to take otherwise.

21 Senator Beall. I was thinking of an inducement.

22 Senator Muskie. This can involve a lot of money. It
23 can involve several millions of dollars.

24 Senator Beall. The state also has to come up with a
25 substantial amount of this money.

1 Senator Muskie. It has got a return of six to one, or
2 three to one at least.

3 Mr. Meyer. It does not have to put anything up.

4 Senator Muskie. If the states do not put up a
5 matching program, it will not cost them a nickel.

6 I don't know. I think it is a straight-line loan, or an
7 advance proposition, and it ought to go back where it came
8 from, if we want to achieve some of these other purposes.

9 That is my own view of it.

10 Senator Beall. I am not making a motion.

11 Before we leave this subject, it is something we
12 may talking about, what is no new source?

13 Mr. Billings. You have the new language.

14 Senator Muskie. If there is a new source in the
15 community, which is attached to the plant, is this any new
16 source of any kind, a new home?

17 Senator Beall. Is it a new home?

18 That is what I wanted to ask.

19 Mr. Meyer. Conceivably it could be.

20 A single new home would probably be treated the same
21 way as a used complex or a new complex of new homes.

22 It would then be a question of how much to direct
23 the burden of the cost, and you could contribute to a parti-
24 cular home, designed here basically to get to a substantial
25 new source.

1 Senator Muskie. The existing residences in a community,
2 where a new plant is built, will it be charged anything for
3 the capital cost?

4 They will have to pay user charges, which will affect
5 the other thing, so why should a new home come along, bear any
6 larger a burden than the homes existing in the first instance?

7 The new home owner is going to have to carry his share
8 of the original debt that the community incurs, for the
9 building of the plant.

10 Mr. Billings. I do not think there would be any
11 addition.

12 It is that portion of construction of such work of
13 such new source.

14 If the works is being built strictly for his con-
15 venience, then there would not be a--

16 Senator Muskie. We have that distinction. No new
17 sources shall be allowed to connect to such treatment works
18 unless the owner or operator of such new source agrees to
19 repay that portion of the cost of construction of such
20 works attributable to such new source.

21 That is a lot different than simply the assumption
22 of a tax bearer.

23 Senator Tunney. If you intend to cycle out costs,
24 what could it mean to a new home, in the way of additional
25 monies having to be paid?

1 Senator Muskie. Of course, if a new home comes on
2 while there is still unused reserve capacity, that is one
3 thing.

4 If a new home comes on, and it exceeds existing
5 capacity, then what?

6 Mr. Billings. The State of Maryland estimates
7 constantly providing services to a new home, and I am
8 talking about all services, it is \$16,000 per house, including
9 streets, roads, utilities, fire, sewer.

10 Senator Tunney. You could not charge the new home
11 owner \$16,000.

12 The point is, regarding a new home, having to pay
13 for construction costs, the Federal share of construction
14 costs could mean, I would assume a couple of thousand dollars
15 per new home, which it seems--

16 Mr. Billings. Scheduled over the life of the home,
17 it would not mean too much.

18 Senator Buckley. Do we have any figures?

19 Mr. Billings. No.

20 Mr. Mayer. The problem which we are trying to get to
21 is--

22 Senator Muskie. It seems to me when you just provide
23 user charges, that is broad enough to cover connection
24 charges.

25 If a new industrial source, that is a separate
proposition there.

1 Senator Beall. I think what you mean is a bulk
2 user.

3 Why don't you use the word bulk user.

4 That could be a housing development, it could be
5 an industry, a commercial establishment.

6 Mr. Meyer. There could be two homes in a development,
7 by definition.

8 Mr. Billings. The reason the language got here in
9 the first place, it was agreed that existing sources could
10 not reasonably be expected to repay the cost of construction
11 of the facilities that were needed in the entire backlog, but
12 they should be planned for the facility in the future, the cost
13 of construction, which is a part of the user charges, and we
14 may have moved from here to there, and considerably further.

15 Senator Muskie. Is not user charges broad enough
16 to cover all classes of users, those already in existence, new
17 ones coming in, so that you do not have to specify special
18 treatment for each class?

19 Mr. Meyer. The one thing wrong with that, if you have
20 a gradual expansion, say a new industrial plant here, new
21 commercial center, and a new development, the user charges
22 for everyone will go up, as these things come on the line,
23 because the expansion costs and replacement costs of the
24 entire facility will be increased, to the point we are getting
25 to, is that when they came into existence, they would make

1 their contribution to expansion and replacement costs over
2 and above.

3 Senator Muskie. I understand that, rather than spell
4 out the gory details, if we simply say they adopt a system
5 of user charges, does not that assume that we understand
6 in setting those, they will have to treat these different
7 situations differently.

8 If I happen to be on my summer place, and if I want
9 to be on the water, it will cost me \$5,000 to have a new
10 line put to the house.

11 I doubt very much the statute giving that authority
12 to the water district specifies what I am going to be charged,
13 but the Board has given the discretion to charge it.

14 Senator Tunney. Mr. Chairman, --

15 Senator Muskie. Where is the language on user
16 charges?

17 Mr. Billings. On page 27.

18 Senator Muskie. It seems to me that we have mandated
19 a system of charges.

20 Well, that system will include just about any situation
21 you can imagine, including those we are trying to specify by
22 this language.

23 Mr. Jorling. There is a further agreement that they
24 will be deposited in the Treasury.

25 Mr. Billings. We have information that total cost of

1 projects constructed by end of fiscal year 1971, 1966 to 1971,
2 it will be \$6 billion 152 million 800 thousand.

3 Senator Cooper. May I ask one more question on
4 this?

5 First, looking at (B) (1), page 26, I assume that
6 means schedule of costs that could be made by the category
7 which should deliver between categories.

8 Now, one other thing, on page 26, (B) (1) (i), says
9 that it will pay the cost of operation, maintenance, expansion
10 and replacement of any wastes, and then in 3, provides operation
11 of maintenance and expansion, replacement, and so on.

12 Is it necessary or is it possible that it could be
13 thirty years ahead?

14 I don't know, but it seems a delay on one generation
15 and a burden to another generation.

16 Senator Muskie. Why don't we just say replacement
17 of treatment works, is that all right?

18 Senator Cooper. Yes.

19 Senator Muskie. Now, we are getting back to this
20 question of authorization, and Leon is giving us the figures
21 that have been completed.

22 Mr. Billings. Senator Cooper, the Association of
23 Metropolitan Sewer Agencies in answer to a question we
24 asked them, not related to this provision, suggests total
25

1 cost of eligible projects constructed by end of fiscal year
2 1971, that is between 1966 and 1971, it will be \$6 billion 152
3 million 800 thousand.

4 That is not broken down year by year, but the total
5 Federal grants obligated to that amount is \$1 billion 440
6 million, which means you have approximately, under that
7 system, about a four to one relationship.

8 It is four state-local dollars to every one Federal
9 dollar in the program for the five-year period.

10 That is the best statistics that we have. We have not
11 received anything from the Administration as yet.

12 Senator Cooper. I just propose that we extend the
13 program to 75 two and a half billion a year.

14 Senator Muskie. That is four years.

15 Senator Cooper. That would be 72 to 75.

16 Senator Muskie. I really think, on this question,
17 I guess I have got enough proxies to prevail. That is not
18 my interest. I think on this question, you ought to have
19 the senators focus positively on this.

20 Senator Cooper. Yes.

21 Senator Muskie. Why don't we try to get the Senators
22 here.

23 This is rather a key issue. There is no point on trying
24 o slid it through on proxies. I want it to be a deliberate
25 decision.

1 Mr. Jorling. The substitute would be the original
2 three, four, five and six.

3 Senator Muskie. I would like to try three, four, five
4 and six.

5 That would be \$20 billion including this year's too.

6 He is talking about a four-year program, and what I
7 am proposing is a five-year program including this year,
8 and each program would start out with the same thing, \$2
9 billion.

10 We have agreed to the \$2 billion to the first year.

11 Senator Cooper. You would like to increase the
12 amounts?

13 Senator Muskie. Yes.

14 I am talking about a four as against a three-year pro-
15 gram.

16 In the first three years, yours would be seven and
17 a half billion as against twelve.

18 That is the difference, and then I add four.

19 Mr. Billings. We would have to come back for more
20 authorization if that separation of figures is anywhere near
21 accurate.

22 Senator Muskie. From the staff, I gather.

23 All right. We have got a sufficient test of senti-
24 ment.

25 If we do not get to the question again, then let's
send this one on to the full Committee without a vote. This

1 is for the \$20 billion that we have a sufficient test of
2 sentiment.

3 Mr. Billings. Let me suggest, Mr. Chairman, we
4 go over to--

5 Senator Muskie. Why can we not start with one?

6 Mr. Billings. We should go to number eight for
7 Senator Cooper.

8 Senator Muskie. All right.

9 Mr. Billings. It is on page 43.

10 Senator Muskie. Number eight.

11 What is there about this that is controversial?

12 Mr. Billings. Mr. Chairman, there is nothing that is
13 controversial.

14 There is nothing so far as we know that is contro-
15 versial in the Committee, but it does put the Federal Govern-
16 ment in the business of determining the levels of pollution
17 at which certain effects occur.

18 If you will recall, back in the 1965 Act, there was
19 considerable controversy, as to whether you should be dealing
20 with Federal criteria or state criteria, and you focus now
21 on a national standards criteria, not on a fifty-state
22 criteria.

23 Senator Muskie. How long will it take to develop
24 these criteria?

25 Mr. Billings. These criteria, an interim criteria has

1 been published.

2 The Administration suggests it should not take more
3 than ninety days to get them out.

4 Senator Beall. Ninety days?

5 Mr. Billings. Yes, ninety days.

6 There will be the initial criteria, which will be
7 inadequate in some respects, and we will probably have to
8 republish some of it in more details, to give more detailed
9 information as required.

10 We could indicate in the report that we recognize
11 this limitation.

12 Senator Beall. I realize there are advantages and
13 purposes to get this thing going as fast as possible.

14 I think one of the faults of the previous program has
15 been the Federal Government has not been in a position to get
16 it really understood, and we do not know what they thing.

17 You are saying you must do this in ninety days, and
18 you are admitting it cannot be done in ninety days, so you
19 are saying you will establish some temporary criteria, and you
20 will come up with some permanent criteria later, which only
21 leads to states to be more confused than they have been
22 confused ever before.

23 Would it be fair to give them say 120 days?

24 Mr. Billings. Your statement is well taken.

25 In fact, we should give them six months, or perhaps

1 even a year, because the decision is on water quality, it does
2 not start to click until 1973, so we could give them a year
3 to come up with this, without in any way reducing the impact
4 of the law.

5 Senator Beall. Why do we give them ninety days
6 then?

7 Mr. Billings. Because we had it in there before.

8 Senator Beall. Do you want to change it?

9 Mr. Billings. The staff has no objection.

10 They could do the first couple of points on this in
11 ninety days, but to do five, I would say a year.

12 Mr. Jorling. Ninety days is not enough. I would
13 say nine months to a year.

14 A year will not interrupt any of the other time
15 schedules.

16 Mr. Billings. Let's give them a year.

17 Senator Muskie. All right.

18 Let's look at number fourteen.

19 Mr. Jorling. The Refuse Act does provide that any
20 person who gives information leading to a conviction under
21 the Refuse Act, a conviction that brings with it a maximum
22 fine of \$2,500, is entitled to one half of any fine so
23 recovered.

24 The United States Attorneys in many areas have
25 been implementing this with various degrees of vigor, and

1 in the New York Attorney's office, New York City, Pittsburgh,
2 Chicago, and the United States Attorney's Office in Wisconsin,
3 they have gone so far as to publish guidelines on how citizens
4 should give them the information which would then lead to
5 a prosecution.

6 The language is proposed in the staff print to be
7 carried over, and this was made, this was done at a time before
8 the decision was made, tentative decision was made in early--

9 Well, it was made not to affect the Refuse Act, but
10 now if the provision goes forward this way, the Refuse Act
11 would stand, the informant fee there would stand, and
12 whether or not it is carried in Federal enforcement here, is
13 the matter that is before the Committee.

14 Senator Muskie. I guess it is a simple direct issue.

15 Mr. Jorling. Very simple.

16 Senator Beall. Is this a real aid?

17 Senator Muskie. It has been used, has it?

18 Mr. Jorling. There has been some successful awards,
19 the most infamous, or famous, are two biologists from the
20 University of Pittsburgh who have been going out, sampling
21 the outfall pipes, and turning their evidence over to the
22 United States Attorney's office.

23 Senator Muskie. They used to call these fellows
24 bounty hunters back in olden days.

25 Senator Tunney. Would that system remain?

1 Mr. Jorling. The way it is written now, that system
2 would be maintained.

3 Senator Cooper. There is something in me that
4 repels against paying informers.

5 I was once a judge when prohibition was still in
6 effect, and that was back in the thirties, and part of the
7 law in Kentucky was that anybody who found a moonshine still,
8 which would lead to conviction of a moonshiner, he got
9 something.

10 Senator Muskie. Well, I have no strong stomach
11 for them myself.

12 Mr. Billings. May I make a point. Regardless of
13 what the Committee does, there is one major problem with this
14 section, and that is that the fine will go to the person
15 giving the information.

16 The law has some very, very strict monitoring and
17 reporting requirements, in fact, mandatory reporting and
18 monitoring requirements, and much of the information that
19 would ordinarily be gathered in response to an informer's
20 fee, will be going to cover data, and it does not seem to me
21 you have in any way by the language which is written here,
22 to cause this section to be used in the manner it is intended,
23 to stimulate people to go out and monitor outfalls.

24 About the only circumstances I could imagine this
25 could be useful under this Act is the deliberate discharge of

1 something that is done at night, in order to avoid detection,
2 but under the Act, the way it is written, I think we are
3 setting a situation where a guy can go look and say--

4 Senator Muskie. You are arguing with the judge, after
5 he has made his decision.

6 Senator Tunney. Would the monitoring provisions not
7 contemplate that problem you just described, should be
8 covered anyway in the monitoring?

9 Mr. Jorling. What I understand him to suggest, these
10 would be wilful and intent violations, and they would not
11 report them themselves even though the law would have required
12 them to do so.

13 Senator Muskie. Look at page 79.

14 Mr. Billings. Senator Cooper, item thirteen.

15 Mr. Jorling. Except for this new language, the
16 Federal enforcement language is identical to it except
17 with the changes of a couple of permissible ways to shall.

18 In the Administration bill and in their continued
19 comments, they requested administrative fines.

20 Administrative penalties could be assessed by the
21 Administrator, and they submitted language at the staff's
22 recommendation to accomplish this, and the language would
23 have provided that whenever a person who violated any order,
24 issued by the Administrator under what is now Subsection 3,
25 beginning on page 73, beginning on page 74, and there was

1 a failure to comply with that order, the Administrator could
2 impose a civil penalty rather than seek a court enforcement
3 of this order, which is the way the print reads.

4 Subsequent to that, it became apparent that the
5 language of the print, it only allowed enforcement or Federal
6 enforcement for continuing violations, where violations were
7 initiated, the Federal Government determined there was a
8 violation, waited the proper period of time, and the violation
9 was continued, so the recommendation is made here that the
10 administrative penalty be extended, not just to the language
11 that the Administration recommended, but to broaden it to
12 allow the Administrator to impose civil penalty, where there
13 was a violation, which is non-continuing.

14 In other words, a person who violated the act for four
15 or five days, or one day, or a very short violation, and this
16 would allow him to impose a civil penalty.

17 The operative language on the civil penalty begins
18 on page 79, paragraph (d) (1), and I will read it as follows:

19 "Any person who has received notification pursuant
20 to paragraph (2) of subsection (a) or, violates or fails or
21 refuses to comply with any order issued under paragraph
22 (1) or (3) of subsection (a) shall be liable to a civil
23 penalty in an amount not to exceed \$25,000 per day of
24 violation to be determined by the Administrator. One-tenth
25 of any such fine under this subsection shall be paid to any

1 person giving information that shall lead to conviction."

2 Mr. Billings. Page 79, Subsection (d).

3 There is a lead into it on page 74, line 9.

4 Under this subsection, those are cease and desist
5 orders.

6 "(2) Whenever, (A) on the basis of any information
7 available to him, the Administrator finds that any person
8 violated (i) any effluent limitation, schedule, or timetable
9 of compliance under section 302 or section 303, (ii) section
10 306, and so on."

11 Mr. Jorling. We would then strike the language which
12 follows on page 79, (d)(1), no penalties, and to strike out
13 the last few words, that is, (d)(2).

14 The way the entire Federal framework would act, there
15 would be basically three possibilities for Federal enforce-
16 ment, and let's leave out the notice requirement for a
17 this section, and the result here would be the Administrator
18 could issue a penalty if it is worth of the court's time, and
19 if it is a serious violation, in which he determines there
20 is a serious violation, and then the person charged does
21 have access to the courts, and then you have another situation
22 where there have been these violations, and according to the
23 testimony we received, opposing the administrative penalties,
24 these are very frequent where people discharge, and they do
25 not discharge again for six months, or eight months, these

1 kind of events they would like to get a handle on.

2 These provide that they could get a penalty provision
3 or to impose a fine on them, or it allows him to use a
4 section where there is a failure to comply with an admin-
5 istrative cease and desist order, and he feels it is not
6 appropriate to bring to the attention of the court, so the
7 framework is to apply to a range of Federal enforcement
8 procedures to the range of violations that can occur.

9 Now, except to administrative penalty, the section
10 is identical.

11 Administrative penalties are used by Coast Guard
12 for violations of various kind of transport rules of the
13 sea, and I believe there are--

14 Do you know of any other civil penalty provisions
15 besides those used by the Coast Guard?

16 Mr. Meyer. The Interstate Commerce Commission in
17 failure to file reports.

18 Senator Cooper. The Coal Miners Safety Act.

19 Mr. Billings. It is very similar.

20 Senator Cooper. This means by administrative, you
21 would impose a fine on violators of a single act?

22 Mr. Jorling. That is correct.

23 If the cease and desist order was issued under Section
24 2, he could use the civil penalty if there was failure to
25 comply with it, if the Administrator felt it had been better

1 to use the civil penalty.

2 Senator Cooper. This is one act, it could be a
3 single act?

4 Mr. Jorling. It could be a single act. The situation
5 is this, we have a problem confronting us, if a man wilfully
6 violates the Act, even on a one-shot affair, there is no
7 way Federal enforcement can be brought to bear.

8 If there is a pattern of frequent violations, where
9 he discharges every third week, the Federal enforcement
10 provision is helpless, as presently written, unless there
11 was some preliminary argument, where in fact it should have
12 been extended that --

13 Well, what this does is to impose constraints on
14 the Administrator, if it is an unintentional single shot
15 violation, is that if in imposing the fine, which is from
16 zero to \$25,000, he should consider the circumstances of
17 the violation, and the nature of the circumstances, which
18 would at least if accompanied by proper report language, mean
19 that if it is a violation which is a violation by a man who
20 has got an otherwise good record, the fine would be low, and
21 if it is a man with a bad record, it would be judged accord-
22 ingly, but one question you raised earlier in the hearings, on
23 the \$25,000 penalty, this was in the Administration bill, and
24 we inquired of the Administration whether or not a court
25 would interpret \$25,000 as a penalty as being in fact a criminal

1 penalty, and allow the defendant the rules of criminal
2 procedure, and the answer that came back was, if I can
3 remember the quote, basically, it said no one can ever
4 tell what the courts are going to do, but there are certain
5 penalties in excess of that provided in the Sherman antitrust
6 Act, and they feel they would be sustained.

7 Senator Cooper. What procedure would be required,
8 is it a jury, is it a court?

9 Mr. Jorling. The court can determine that.

10 Senator Cooper. I cannot say that I would be
11 against it, but we should have some element of procedure.
12 I left legal training a long time ago, but I am against
13 administrative mandatory fines.

14 I just do not see any due process. I would not try
15 to propose anything today, because it is too complicated.
16 I do not like these mandatory administrative laws. I do think
17 it violates due process.

18 Senator Muskie. Are these mandatory fines?

19 Senator Cooper. In the Miners Safety Act, this system
20 has raised havoc on mines. It is not applied equally. I
21 remember the other day one of the big mines in the Country,
22 they received some big penalty, and I do not know how many
23 penalties, administrative fines that have been levied, and
24 it is driving them out of business.

25 This is not exactly the same, but it gives you an

1 idea of the difficulty of the system of mandatory administrative
2 penalties.

3 Anyway, I will not hold up the bill because of this.
4 I will try to do some work on it in the thirty days, and if
5 I will have anything on it, I do not know, but I do not like
6 this mandatory business, and I hope every libertarian in
7 this room will think it over.

8 Mr. Jorling. There are two elements on this. One is
9 the level of the fine provided, \$25,000.

10 The second is the mandatory in a sense that if the
11 Administrator determines there has been an action which allows
12 him to move under this section, he shall issue a notice and
13 the defendant, or the alleged violator shall be liable to
14 a civil penalty, followed by an adjudicatory hearing under
15 Section 554 of the Procedures Act.

16 Senator Boggs. This is only for the big corporation,
17 is it not?

18 Mr. Jorling. But they could be subject to that
19 if the Administrator wished it so.

20 Senator Boggs. On a small corporation?

21 Mr. Jorling. Yes. That is why I think the level
22 of the fine is one of the very critical issues in the
23 administrative penalties device.

24 The other aspect, if you have a full-fledged adjudi-
25 catory hearing, that you do remove from the courts some of

1 these cases which it may, because of inclination, or expertise
2 in a sense not been capable of handling, or because of its
3 case load, should not be handling, especially these where the
4 event has passed, the violation is now abated, but, really,
5 what is at issue is sort of a sanction to prevent re-occurrence,
6 which provides administrative procedure to assess that
7 penalty rather than a judiciary.

8 Senator Muskie. I have questions about this too
9 that I have not resolved to my satisfaction.

10 Senator Cooper. There must be some procedure to
11 clean it up.

12 Senator Muskie. I am not going to vote for it in
13 the way it is.

14 Why don't we reserve this question until the end
15 of the agenda.

16 Mr. Billings. Mr. Chairman, could we move to page
17 63, to new sources.

18 I do not think there is anything controversial about
19 that.

20 The staff would like to call attention to the members,
21 to the fact the new source performance standards on page
22 sixty-five, the language of the modified Bentsen amendment
23 has been included to read the Administrator shall promulgate
24 such standard and performance, and so on, and this language
25 would then play into this question of application of the best

1 available technology to new sources of pollution, a test
2 of economic and social benefits, without getting into the old
3 problem of economic feasibility, and the burden of proof would
4 be beyond those that are subject to that standard.

5 In other respects, the language of this section is
6 similar to the language, it is identical to the language of the
7 Clean Air amendments as passed by the Senate, with the excep-
8 tion of a specific listing of the categories of pollution sources
9 to which it replied.

10 Mr. Jorling. Also it should be pointed out in the
11 early prints, on page 65, lines 11 and 12, we one time had a
12 90-day period in there, that is 90-days after the inclusion
13 of the category of stationary sources in a list, and pursuant
14 to many comments, for all of these, that would be very difficult,
15 this now practical that no case later than one year.

16 Mr. Billings. The reason the list is necessary, the
17 Clean Air amendments, the Senate anticipated some 19 points
18 would be subject to new performance standards, the list by
19 the Administration included five.

20 In addition, the studies performed by the Administra-
21 tion to indicate the best industrial sources of pollution include
22 the types of industries on this list, so that information is
23 presently being gathered.

24 Senator Cooper. Can this be done in the time provided?
25 What is the time provided?

1 Mr. Billings. One year. The standard becomes
2 effective--

3 Mr. Billings. It is one year.

4 It is three months theoretical time before he would
5 have to initiate or promulgate and publish a standard, and
6 then there would be a period for comment, and then another
7 sixty days before that comment before promulgation, so it would
8 be one year, nine months, before you would have a promulgated
9 standard, which would be effective on the date of promulga-
10 tion, so in other words, for those applicable sources, begun
11 after that date, they would have to meet this standard, so
12 the minimum time is one year, nine months.

13 Mr. Jorling. Sometime before 1974, any of these
14 sources would be subject to new performance standards.

15 Senator Boggs. On this point, Mr. Chairman, we
16 are just talking about application of the latest available
17 control technology.

18 Probably we ought to have that term available as
19 defined in the Air Control Report.

20 Mr. Billings. We will so do.

21 Senator Muskie. Is there any further question or
22 discussion?

23 If there is no objection then--

24 Mr. Meyer. The Committee report language that you
25 referred to, from the Senate Report, it will appear in our

1 report.

2 Senator Boggs. That is correct.

3 Mr. Meyer. Another question, this is with respect
4 to industrial response, by the definition of the term
5 modification.

6 It goes to the question of the amount of any water
7 pollutant discharge.

8 Mr. Billings. It was suggested a modification relate
9 to increase because it is caused by the violation of the
10 effluent limitation.

11 Mr. Meyer. The problem is you may come across an
12 industry which has not been producing fairly high levels,
13 and it is producing more, and it is just discharging more.

14 Mr. Billings. So as to violate effluent limitation
15 discharges.

16 Mr. Meyer. Yes.

17 Mr. Billings. Would that do it?

18 Mr. Meyer. Yes.

19 Senator Muskie. Any other questions?

20 Ready for the question?

21 Without objection, then, the provision is agreed
22 to.

23 Mr. Billings, Mr. Chairman, may I suggest, as I
24 understand it, at this point there is no objection to the
25 non-point source controls provision as it is revised, is that

1 it?

2 That is at Section 304.

3 Mr. Jorling. Page 57.

4 Mr. Billings. The staff understands the Department
5 of Agriculture has no objection over the language, except
6 they would like to have co-approval control over the program
7 relating to agricultural authority over programs having to
8 do with agricultural and crop runoff.

9 Mr. Meyer. What they want is a joint pronouncement,
10 that these are the things that should be done.

11 Mr. Billings. The staff recommends the Department
12 of Agriculture involvement, being in terms of the extent
13 which it becomes financially involved, in its decision to be
14 made at that point, and if DOA funds are going to be used,
15 then DOA should have determination on how those funds will
16 be used.

17 Senator Muskie. I am not quite sure yet.

18 Mr. Billings. Can you speak on that?

19 Mr. Jorling. Again, I hate to do this, but relating
20 back to that publication on criteria, we have the authority,
21 that is, dealing with relationship between the Administrator
22 and other secretaries of the Executive Branch, who have pro-
23 grams which can be used, or are being used for purposes related
24 to water pollution control, either primarily, or incidentally,
25

1 to their authorization funds, and we were instructed to draft
2 language to upgrade that, and we have and it appears on page
3 46.

4 Now, that language, correct me if I speak inaccurately,
5 was reviewed by the Department of Agriculture, and they are
6 satisfied with the description of the relative relationships
7 expressed there, and then the Department of Agriculture back
8 on page 56, paragraph 2(A), and that is the thing when a
9 state submits a program to the Administrator for his approval,
10 or disapproval, an act which does not bring any consequences
11 but they would like some consideration in that approval, or
12 disapproval decision.

13 I think Leon has suggested that if at all it should
14 be limited to any time a state submitted a program which
15 called for utilization of any program, under the authority,
16 or under the Administration of the Department of Agriculture,
17 before the Administrator could approve or disapprove that
18 program, the Department of Agriculture have equal say in the
19 decision.

20 Mr. Gordon. Could I call to the attention of the
21 Subcommittee a little sleeper on page eleven.

22 Senator Muskie. Related to this paragraph?

23 Mr. Gordon. Subsection (c).

24 Mr. Jcrling. That language was in to be in consulta-
25 tion with the Secretary of Agriculture.

1 Mr. Gordon. What you are saying is that the Adminis-
2 trator has veto power over any program or project that relates
3 to--

4 Mr. Jorling. You are reading a different Section
5 (C).

6 Mr. Billings. We never discussed this.

7 Senator Muskie. You do not like that provision?

8 Mr. Gordon. I question whether it is workable.

9 I do not believe the National Oceanic and Acquisition
10 would like it.

11 Mr. Billings. It might be some way to have attention
12 focus on the floor to--

13 Senator Dole. EPA is a little disturbed about the
14 testimony we got from the Corps of the Secretary of the
15 Army.

16 Mr. Billings. If it is in water pollution control,
17 waste treatment disposal, I do not know why we should have
18 it decentralized.

19 Senator Muskie. Why is (C) in here, why did not we
20 see it before?

21 Mr. Billings. Who put it in here?

22 Who put it in here, Tom?

23 Mr. Jorling. Is that the answer at the end of that
24 sentence?

25 Mr. Billings. You defend it then.

1 Mr. Jorling. I will defend it in part.

2 It arose in the context of, first of all, the sailing
3 water bill was pending at that time, in which it appeared there
4 was conflicting research going on in several agencies of the
5 Federal Government.

6 It was then broadened to include any program for the
7 reservation of waste treatment or disposal, because of the
8 possibility that the funds that were granted in a research
9 program here, which are rather substantial, could be either
10 repeated, or in any event, diluted by other programs, in the
11 Federal Branch, unless these agencies were required to focus
12 all of their research in this area, or send it all through
13 one funnel for consideration.

14 Basically it is a mechanism to have all Federal dollars
15 dealing with these areas, brought through a single funnel, so
16 that everybody benefits, first of all, especially that
17 individual required to the regulation, and, as well, bring
18 some authority to the Administrator to prove or disprove, and
19 I suspect the most objectionable feature if any to this is
20 that language, rather than a requirement the Administrator
21 shall review it.

22 I think it is good the Administrator review it, because
23 we have got pretty conclusive evidence that there is some water
24 pollution control technology which is available, which the
25 Administrator does not know about, and in this way, he would

1 become knowledgeable.

2 Senator Boggs. I do not think it is such a bad
3 proposition.

4 You might water it down a little. I think it is a
5 good idea to check on duplication.

6 Senator Cooper. I think also you cannot allow to
7 hold back creativity.

8 You can have groups come up with competition and
9 good answers.

10 Mr. Billings. Mr. Chairman, the staff recommends
11 that this section be pulled out of here, and we require
12 GAO to review and periodically report to the Congress on
13 research survey pilot demonstration programs in these areas
14 as to duplication.

15 Senator Muskie. Without objection, that is agreed
16 to.

17 Mr. Jorling. So we pull the section out?

18 Mr. Billings. Yes.

19 Senator Muskie. Can we go back to the Secretary
20 of Agriculture?

21 Where are we with the Secretary of Agriculture?

22 Mr. Jorling. The question is should the Secretary
23 of Agriculture be allowed to approve or disprove, along with
24 the Administrator any plans submitted with the requirement on
25 this page, if such a program is submitted by the state, calls

1 for any expenditures in that state, under authority that is
2 granted to the Department of Agriculture.

3 It is not provided here, and the question is should
4 it be.

5 Mr. Meyer. The reference is made back to page 45, where
6 you have the Administrator issuing to the states informational
7 processes, procedures and methods.

8 Now, it is at that point that you could have the
9 agency involved share with the Administrator the duty of
10 issuing the guidelines.

11 This was done in the 1966 Highway Act, when soil
12 conservation was involved, the Secretary of Transportation
13 and the Secretary of Agriculture developed those guidelines,
14 once they became developed, it became the Secretary of
15 Transportation's job to make sure they were carried out
16 since it was his program.

17 That sort of takes care of the issue, because once the
18 informational procedure are doned with, to the extent the
19 Administrator is involved in the program, and people then
20 come to him for financial assistance under this thing, he can
21 go back to the guidelines that the agencies have jointly
22 developed.

23 Senator Muskie. To give the Secretary of Agriculture
24 authority to share, on line 13, page 57, but who do we
25 include with respect to line five on page 58?

1 Mr. Jorling. Logical consistency would say yes,
2 unless you adopt Barry's suggestion, which is that develop-
3 ment of criteria should be co-issued.

4 Mr. Billings. Cannot we just instruct them to
5 cooperate?

6 Senator Muskie. I just rebel at the idea of the
7 Secretary of Agriculture to have co-authority.

8 When do they get together, Sunday dinner?

9 Mr. Jorling. I think the suggestion by Leon is in
10 the report, that we say in doing this under Subsection (f),
11 the appropriate agencies of the Department of Agriculture, and
12 then we can focus that more specifically, and also recite the
13 programs in the respective departments we envision will be
14 included.

15 Senator Muskie. All right.

16 Any other question about non-point services?

17 We now start with number one and go to standards.

18 Number one would add a statement to the statement
19 of purpose, certain language that is relevant to the standards
20 of the provisions, and we ought to read it.

21 You do not find in your Committee print the statement
22 of purpose, so let me read it out of this compilation.

23 The purpose of this Act is to enhance the quality
24 and value of our water resources, and to establish a national
25 policy for prevention of, control and abatement of water

1 pollution.

2 This language would be added at the end of that.

3 I will submit this entire paragraph to be inserted
4 in the record.

5 (COMMITTEE INSERT:)
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1 Senator Muskie. I think it would be useful to focus
2 on the statement of the agenda, because it is more abbreviated,
3 and it is easier to comprehend.

4 This is page two of the agenda, item nine, establishment
5 of a two-stage water quality standards program.

6 1) Provides that water quality standards which meet
7 the requirements of the Water Quality Act of 1965 and which
8 protect public health shall be implemented for all interstate
9 and intrastate waters by January 1, 1975. Provides a procedure
10 to review and revise existing interstate and intrastate stand-
11 ards and plans to implement this objective and provides a
12 procedure to adopt intrastate standards and plans where non-
13 existent.

14 2) Sets forth national water quality standard. Re-
15 quires detailed implementation plans for such standard by
16 January 1, 1974 to be in effect (either approved or disapproved
17 and Federally substituted) by January 1, 1975. Implementation
18 to be achieved by January 1, 1980. Provides extension of a
19 deadline for specific waters to comply with national standard
20 on the basis of specific finding as a part of a plan approval
21 process.

22 Now, the effect of the first part of this two-stage
23 program, is, one, to set January 1, 1975, for the completion,
24 plans that are now developed.

25 That would be, I take it, advancing the completion date

1 of the plans in those states.

2 Mr. Billings. In terms of the State of Maine, it is
3 October 1, 1976.

4 Senator Muskie. So this would advance that date
5 of Maine, and it would advance some of the other states.

6 Senator Boggs. On that point, Mr. Chairman, I do not
7 know whether we can get them to come up to January 1, 1975
8 or not.

9 I have this case with the General Rivers Basin Authority,
10 if I may give you an example, from a practical point of
11 view, so that, and this is the way they put it, the 1975
12 date appears unrealistic.

13 For example, the City of Philadelphia, to complete
14 plans to meet water quality standards already set by the
15 Delaware River Basin, must build three new treatment plants.

16 The City has begun design work on one of these plants
17 and has initiated enough planning on the other two.

18 If the City of Philadelphia could get some
19 engineers, it might be able to move on design work of the
20 other two plants next spring.

21 The design work will take one to two and a half years,
22 and then the design must be approved by EPA, and the contracts
23 let, if it goes will, this takes another six months, and the
24 City could reasonably begin construction in the spring of
25 1974.

1 Under no circumstances could such a major facility
2 be constructed in less than two consecutive years, therefore,
3 it will take to three to six months for a shakedown period on
4 the operation of the plant, and it could be operating, at its
5 needed efficiency by early 1976, therefore, it would seem the
6 deadline in those cases would be really pushing them, if by
7 January 1, 1975, even though that is desirable, and we would
8 like to do it, it says here it should be noted that at this
9 time if it is assumed, it assumes no major dislocation such
10 as strikes, and so forth, and the City's program calls for a
11 total expenditure of approximately \$150 million.

12 Also, due to the State's current fiscal crisis, the
13 City of Philadelphia, which does not have enough money to
14 run its schools, the City of Philadelphia would probably have
15 to put up forty percent of the projects' costs, or sixty
16 percent, and that is one of the situations there.

17 I just bring that to your attention, and then back
18 here on page fifty, you have January 1, 1976.

19 How does that tie in?

20 Mr. Billings. That should have been 76, but the
21 staff is aware of the fact that if this law is enacted by
22 January 1, 1972, three years from the date of enactment is
23 probably an unreasonable close date for municipal waste
24 treatment facilities not presently in the process, if you
25 are starting fresh.

1
2 Now, the date should not be unreasonable, if you
3 consider in terms of the 1965 Water Quality Act.

4 It is ten years from that date.

5 Senator Muskie. But we cannot take them back to
6 1965.

7 Do we have any information as to the variation of
8 deadlines across the Country?

9 Mr. Billings. On the average, the deadlines are late
10 74, 75.

11 There are lots of 1972 and 1973 deadlines which will
12 not be met.

13 New York City has a 1973 deadline.

14 Senator Buckley. If the people in New York get
15 ninety percent of their facilities ready to go, that is,
16 fully planned, by 1972, within five years they will be able
17 to achieve the standards they have set by the 1965 Act, so
18 they are talking more or less of 1977.

19 Senator Tunney. It would seem to make sense, perhaps
20 to think in terms of 1976, would it not, Mr. Chairman?

21 Senator Muskie. I suspect you have got this problem
22 with respect to 1975, there may be another one with respect
23 to 1976, and that one will be just as pressing.

24 Senator Tunney. Except there is a difference between
25 three and four years and giving them twenty-five percent
more time.

1 Senator Muskie. What this poses, if you are asking
2 the impossible, does it make sense to ask.

3 Senator Tunney. It does not make sense to ask
4 probably anymore than it makes sense to give an answer,
5 but on the other hand, we are talking about a date, which
6 has got, and inasmuch as we are making some of these decisions
7 in other areas as well, without all of the data that we would
8 like, a twenty-five percent increase now in time seems to me
9 to be reasonable when you are talking about four years.

10 Senator Muskie. The point is, what we are talking
11 about, the deadlines are set in accordance with a plan developed
12 under the 1965 Act, and if their construction schedules are
13 phased over that period of time, and now with three years less,
14 we celebrate the completion date, we are not talking about a
15 lack of data, we are talking about forcibly requiring them
16 to speed up, something that would seem to be an impossibility.

17 Mr. Billings. Mr. Chairman, in many cases, these dates
18 are slid, dates that were in the 1965 Act, which call for
19 much earlier compliance schedules, slid as a result of the
20 failure of the Federal Government to keep its financial commit-
21 ment.

22 If the Congress were to authorize contract authority,
23 let's assume just the Administration figures, without any new
24 figures, if the amount which the Administration identifies
25 over the next three years is the amount necessary to implement

1 water quality standards, and all of that money is available,
2 then January 1, 1976 certainly should not be an unreasonable
3 date, and the more reasonable the date becomes, assuming
4 you have enough total time, and we are told that four years is
5 not an unreasonable time from start to finish with the
6 planning of construction--

7 Mr. Jordan. Mr. Chairman, could I suggest by
8 referring back to the language that appears on page fifty-one,
9 implementation plans section, Subsection 2(A), referring--

10 Senator Muskie. We have not gotten to that yet.

11 Mr. Jordan. But I believe it bears on this.

12 Senator Muskie. I know it does, but I do not want to
13 get to that before we get to this one.

14 Mr. Jordan. What I was going to say is in that
15 language by providing that the state shall provide for the
16 attainment of Mr. Tunney's standard as expeditiously as
17 practicable, but in no case, later than January 1, 1980, if
18 in a sense that language is carried out, the Administrator
19 will apply to each state a schedule of compliance that is as
20 expeditious as practicable.

21 Senator Muskie. Obviously, if the staff has developed
22 a deadline for the first part, the first stage, related to
23 the January 1, 1980 target, Senator Tunney wanted to establish,
24 and now if we want to shift this one, push it back, that affects
25 that second stage, but I want to settle the first language

1 first.

2 Mr. Jordan. That language is as expeditiously as
3 possible. That does not say as fast as you can do it.

4 Senator Muskie. You are still talking about January
5 1976.

6 The deadlines earlier than that would still be adhered
7 to.

8 You are not saying to stretch them out. What you
9 are talking about, the effect of either January 1, 1975, or
10 1976, what the effect is on deadlines that are later than
11 that, not earlier ones.

12 If they are later than that, I doubt very much that
13 you could get them to complete before this deadline.

14 What you are hoping is that they could do it by
15 this deadline.

16 Mr. Billings. We are also suggesting, as Federal
17 funds are available, as contemplated through the contract
18 authority, then these plans could be shifted, because these
19 plans are sliding, as a result of the lack of participation.

20 Senator Muskie. You are talking about municipal
21 wastes.

22 How about industrial wastes that have been developed
23 in accordance with construction schedules.

24 Mr. Billings. By and large, the industrial waste
25 schedules are earlier than the municipal, except in cases,

1 again going back to Maine, where they expect to provide treat-
2 ment for both the municipalities and the industrial wastes
3 under one roof, under one system, that is where this
4 problem lies.

5 This encourages joint use of systems, so the
6 deadline would be the same time.

7 Senator Muskie. I would like to know about those
8 situations in which you do nothing.

9 The assumption is there is no problem in a situation
10 where you do nothing.

11 Mr. Jorling. If you recall, we had hearings earlier
12 on abatement orders issued to the Cities of Atlanta, Cleveland
13 and Detroit for failure to be on schedule, and in all of those,
14 in all of those cases they have been negotiated with the
15 Administrator, and the report has been withdrawn, but I will
16 check, but my recollection is the orders were drawn on a
17 commitment, the communities moved their compliance schedules
18 up, and I am quite sure all three of them have moved them
19 up to January 1976.

20 In fact, one is 1975.

21 Senator Muskie. Can we get the information, can the
22 Administrator tell us how either of these proposed deadlines
23 relate to deadlines developed under existing programs?

24 Mr. Billings. We have been informed about the
25 average.

1 Senator Muskie. I am not interested in the average.
2 I am interested in the range.

3 There is no such thing as an average. It does
4 not exist.

5 I want to know what the range of deadlines is, so we
6 can see how many problems we are creating, if any.

7 Perhaps we are creating none.

8 Mr. Billings. In the investigation, the latest
9 deadline we found was 1978.

10 Senator Boggs. From 1965?

11 Mr. Jorling. For a big city.

12 Mr. Billings. But that did not seem to reflect a
13 great sense of urgency.

14 It just tended to reflect a lack of money. I do not
15 know if that helps you.

16 Senator Muskie. No, it does not.

17 Senator Boggs. Then let's get the information.

18 Senator Muskie. Now we are seeking to advance a
19 deadline that is objectionable.

20 When you enact the law, automatically you create
21 criminals as of that moment, and I think we ought to pass
22 legislation that will stretch it as much as possible.

23 Let's tentatively put 1976, and then let's try to get
24 some information, what the range of deadlines is, and some
25 explanation.

1 The 1978 deadline sounds like a pretty unreasonable
2 stretched out period in the light of the 1965 Act.

3 I do not know who agreed to that. I would like to
4 know who did, and why, and why they were permitted to wait
5 that long.

6 We need that kind of information.

7 Mr. Jorling. If the bill is printed again, and this
8 is sent down, and there is specifically--

9 Senator Muskie. Let's put the 1976 deadline in for
10 reporting it to the full Committee.

11 That gives you a month to get that information.

12 Is that agreeable?

13 We put 1976 in as the deadline for reporting to
14 the full Committee.

15 Senator Tunney. Yes.

16 The one thing that I think we might consider is
17 the point that was raised regarding as expeditiously as
18 practicable and determine that as to your deadline, and I just
19 feel that we perhaps could utilize more data as to what
20 the timetables are in the various states, with respect to
21 achieving the deadline on point sources, municipal and indus-
22 trial point source solution, and maybe that would enlighten
23 us when we get to a discussion in the full Committee, as
24 to what the exact date should be, but I certainly do not object
25 to the 1976 date, as a tentative date.

1 Senator Muskie. Let's get all of the data that we
2 can for the full Committee, and then act on this.

3 There are two variations, one, there would be a
4 variation for deadlines achieving the same thing, and then
5 there would be variations as to the goals, and a state
6 with an earlier deadline may be achieving less.

7 Senator Tunney. We accept the language as fast as
8 practicable.

9 Senator Muskie. I mean under existing law, that--

10 Senator Tunney. Page 51, @ (A), it says the Administra-
11 tor shall within six months approve a plan, and then it
12 provides for the attainment of such standards as expeditiously
13 as practicable, but in no case later than January 1, 1980, for
14 getting to the 1980 date, but as expeditiously as practicable
15 means that if the state has a plan to be achieved by 1974, that
16 would be as expeditiously as practicable.

17 I would assume the Administrator would require it
18 be achieved by 1974, because that means as expeditiously as
19 practicable.

20 Senator Muskie. I do not think that language is
21 necessary.

22 I think if the deadline is earlier than 75 or 76
23 is already planned, there is nothing in this language to
24 stretch out that.

25 Mr. Billings. Page 50, paragraph 2--

 Senator Muskie. It is clear if the deadline is

1 earlier, it must be met in accordance with the existing plan
2 and existing law, so I do not think you need it.

3 I was saying under existing law, the fact that a
4 state has an earlier deadline, it does not mean it is achieving
5 more.

6 A state with a later deadline may be doing more, and
7 it may have stricter objectives in mind, and that may be the
8 reason this deadline is later.

9 The earlier deadline may be because you are under-
10 taking something that is less meaningful, so you may have
11 a variation.

12 Senator Tunney. I agree.

13 Senator Muskie. We have a vote, so we will take
14 a short recess.

15 (Whereupon, the Committee was in short recess at
16 4:45 o'clock p.m. until 5:30 o'clock p.m.)

17
18 - - -
19

20 Senator Muskie. The Subcommittee will be in order.

21 We are on part two of item nine.

22 How about the procedures, where is that?

23 Mr. Billings. That language appears on page 49,
24 Subsection (E).
25

1 This is where we give the states six months in which
2 to adopt intrastate standards.

3 Senator Muskie. The second stage of the standards
4 of the program is the national water quality standard. The
5 deadline is January 1, 1980, with provision for extension
6 of the deadline, for specific waters, in accordance with our
7 earlier discussions.

8 Now, to what extent is this deadline related to the
9 first deadline, and is dependent upon it--

10 Mr. Billings. May the staff raise a question about
11 that, which goes to that question in a different way, it is
12 if you have a community which is moving to the 1976 deadline,
13 and there may be instances in which there is a very small
14 additional investment, and with that the communities will
15 be able to raise the quality of their effluent, or change
16 their practices to meet the national water quality standard,
17 and there is not any provision in this section to put those
18 two things together, it may mean an additional compromise on
19 time, but at the same time it will be a considerably more cost
20 effective way.

21 Senator Muskie. Is there any way of identifying some
22 quantitative way the waters which will not meet the second
23 deadline after the first deadline has been met?

24 Mr. Billings. In a general way, the existing standards
25 is to the extent that is meaningful, would enable them to

1 provide a recreation standard for ninety percent of the
2 Nation's waters.

3 The difficulty is the recreation standard does not
4 necessarily mean a quality that would support swimming.
5 It could be both, which is not a very high standard, which
6 indicates that we--

7 Well, the Staff is proposing in order to overcome
8 the basis, the basic problem in legislation of information
9 lag, the national water quality and waste discharge inventory,
10 to be completed by January 1, 1973, which will identify the
11 existing quality of water, the existing standards water
12 quality, the level of water quality, will be achieved by the
13 date set in the law, and what has to be done in order to move
14 from the existing quality to that quality, which meets the
15 standards of the national standard.

16 That is something that is prospective, and additionally,
17 I might point out--

18 Senator Muskie. What page is that language on?

19 Is it forty-seven?

20 Mr. Billings. Yes.

21 Because the standard as it is written is a quality
22 standard rather than a use standard, the staff recommends
23 deleting the language on line sixteen and seventeen, which
24 says "allow recreational activities on the water and, whenever
25 natural physical characteristics permit, in the water."

1 That provides you with a qualitative goal, even though
2 you may not be using the water for that specific purpose.

3 Senator Muskie. In all cases, will it make swimability
4 possible, even if there is no possibility of swimming?

5 Mr. Billings. From a qualitative point of view,
6 yes, not from a practical point of view, because swimability
7 is largely a measure at this time, color form, which is good
8 and sufficient reason to achieve a quality that will support
9 that use, even though you may not be using the water for
10 that.

11 Senator Tunney. Subject of course to extensions and
12 exceptions, if it is determined that it is not a reasonable
13 thing to do.

14 Mr. Billings. Yes.

15 Senator Boggs. It is provided for?

16 Senator Tunney. Yes, it is provided for.

17 Senator Boggs. I would think the 1980 deadline would
18 be the easier to reach than the 1976, because I think when
19 you get to 1976, you are well on your way to reaching the
20 1980 deadline.

21 Much of it will have been reached, or close to it.

22 Senator Tunney. I would agree.

23 Senator Muskie. I think the Houston Ship Channel
24 will be--

25 Senator Boggs. There are exceptions.

1 Senator Muskie. We are talking about the heavily
2 industrialized rivers.

3 That is just a well known example.

4 Mr. Billings. You may have an exception which
5 says the Houston Ship Channel will not meet the standards
6 set forth in the law for 1980, however, the quality of the
7 Houston Ship Channel water will have to be of sufficiently
8 high quality to make sure that Galveston Bay, which will not
9 be subject to exceptions, will meet the national standard,
10 so you will be imposing sufficient controls on the Houston
11 Ship Channel anyway.

12 Senator Muskie. Is it the same?

13 Mr. Billings. Is it the same in terms of the quality
14 of water in the Channel and quality of water in the Bay?

15 Senator Muskie. But your requirements say to.

16 Mr. Billings. You are requiring it unless the
17 extension is provided, and the measures of the extension.

18 Senator Muskie. No, the extension is only an
19 extension.

20 Mr. Billings. That is right.

21 Senator Muskie. To acquiring the quality, swimability,
22 even though you know nobody is going to swim in it.

23 Mr. Billings. Swimability is probably the lower of
24 the two standards.

25 Protection of fish and shellfish is probably the

1 higher standard.

2 Senator Muskie. What shellfish, fish and wildlife
3 are we going to protect in the Houston Channel?

4 Mr. Billings. Basically you are going to protect
5 the shellfish in the bay right outside the Houston Channel
6 which are presently contaminated.

7 Senator Muskie. To what extent does that mean having
8 that quality of water in the Houston Channel?

9 Mr. Tunney. I suppose you could give exceptions for
10 both, but I suppose you could put some heat on the state
11 implementation plan to justify that the Gavelston Bay ought
12 to be excepted as a result of the need to keep the Houston
13 Channel heavily polluted.

14 Senator Muskie. Not really focusing on that, except
15 as a way of clarifying, I would figure the class of water
16 way that probably exists in many places today--

17 Mr. Jorling. The Houston Ship Channel is probably
18 one of the more readily cleanable in terms of effluent controls,
19 because there is not significant nonpoint source running off
20 problem into the Houston Ship Channel.

21 The problem may be greater in other areas. I think
22 the intention is to provide as a measure of quality, that it
23 shall reach that ultimate, but provided there may be extensions
24 without limit of time, the extensions would be granted for
25 five year periods indefinitely subject to review of the

1 necessity of the extensions.

2 The difficulty will come in many areas, where there
3 is accumulated in place sludge, in nonpoint runoff problems,
4 more so than point source discharge controls, in those
5 areas, the requirement would be that ultimately they are
6 shooting for the quality of water measured by the national
7 standard, but that they can receive extensions in five-year
8 blocks of time, subject to public hearings at the end of that
9 five-year period for reconsideration whether an additional
10 extension should be granted.

11 Senator Muskie. Where is the extension on here?

12 Senator Tunney. Page fifty-five and fifty-six.

13 Mr. Meyer. Beginning on line fifteen.

14 Mr. Jorling. It actually appears on line twelve in
15 the next page.

16 Senator Muskie. Where is the language that says a
17 series--

18 Mr. Jorling. I think the intention is not clear.
19 Is it our intention that these should be repeatable for
20 five-year periods?

21 Mr. Billings. The Staff did not make that decision.
22 The staff language sets forth one five-year extension, but
23 it was not intended to be a recommendation.

24 Senator Muskie. Now, as against opening the door to
25 a series of five-year extensions, and adopting a sense of

1 realism about particular waterways, now, I would rather take
2 a realistic attitude, you know, there is a certain thing
3 impossible to achieve in a waterway, so why fool yourself
4 about a series of extensions that we are asking something
5 to ultimately be produced.

6 Mr. Billings. There is a certain amount of reluctance
7 to the extent you are asking the impossible, in the Houston
8 Ship Channel or anything anywhere else.

9 Senator Beall. The Potomac River, for instance.

10 Senator Muskie. Do you think you will be able
11 to clean up the Potomac River by 1980?

12 Mr. Billings. No.

13 Senator Beall. By 1985?

14 Mr. Billings. Possibly.

15 Senator Muskie. You are postponing the period for
16 those present who have the responsibility, and the more
17 it is postponed, the easier it is to set it off.

18 Senator Tunney. It is envisioned there will be
19 some public hearings, and I can imagine that those public
20 hearings, you will have people coming in, and addressing
21 themselves to the needs to clean up that particular waterway,
22 within the five-year period, assuming you did have indefinite
23 five-year periods, subject always to a new hearing, and a new
24 justification by the Governor of the state involved, that there
25 should be a continued extension, it might be that we wanted to

1 also have some hearings by the Administrator, at least give
2 people the opportunity to submit documentation to the
3 Administrator, that the action taken by the Governor as a
4 result of the hearings at the state level were not reasonable,
5 the extension should not be given as a result.

6 Mr. Billings. Let me make another additional point,
7 Mr. Chairman.

8 The most difficult areas, the areas in which this
9 standard will be most difficult to achieve will be the
10 estuaries.

11 The estuaries are the areas in which it is most
12 important that this standard be achieved, within some period
13 of time.

14 The information that is available on the estuaries,
15 and relationship of the world's estuaries, to the food
16 chain, and as a source of food production, and so on, is
17 overwhelming, and a standard that is less than protective
18 of fish, and shellfish and wildlife, within the estuaries,
19 is something I do not think you can afford to not achieve.

20 There is just too much overwhelming evidence.

21 Senator Muskie. What is the thing going to cost?

22 Mr. Billings. Of not achieving it, or achieving
23 it?

24 Senator Muskie. Achieving it.

25 Mr. Billings. I cannot answer either question.

1 Senator Muskie. Is your \$20 billion going to achieve
2 it?

3 Mr. Billings. If all the tools of this Act are
4 applied, probably that is about half of what it will cost,
5 \$50 billion, considering what is going to have to be done,
6 that in the agricultural areas, and so on.

7 In terms of public funds--

8 Senator Muskie. Where will we provide the additional
9 \$30?

10 Mr. Billings. There will be some expenditures in
11 terms of--

12 I am not suggesting that all \$50 billion will come
13 out of the public treasury.

14 We are talking of \$20 billion, if this bill authorizes
15 \$20 billion, that is seventy-five percent of the \$28 billion.

16 Senator Muskie. \$28 billion does not have anything
17 to do with nonpoint source ocean or stream.

18 It may not include, we made a very wild guess, as to
19 how much of the cost of industrial pollution will be included
20 in the \$28 billion figure.

21 Mr. Billings. If you add the \$34 billion which is
22 the estimate from that information right there, the Council
23 of Environmental Quality studies, as it indicates, I suspect
24 that \$50 billion would be a rather reasonable figure, if not
25 considerably less than that.

1 Senator Muskie. \$50 billion represents what?

2 Mr. Billings. An investment of what it might cost to
3 implement this standard without exception, if you were going
4 to implement it without exception.

5 Senator Tunney. How much has been spent since
6 1965?

7 Mr. Billings. \$6 billion.

8 Mr. Jorling. That is for municipal construction.

9 If you add industrial expenditures in there, which
10 has been escalating recently, it becomes a much larger
11 figure.

12 It is more than double.

13 Senator Tunney. Somewhere between \$12 and \$15
14 billion?

15 Mr. Jorling. I think you could find support for
16 that kind of expenditure, although there is no commonality
17 to the figures, you are not sure whether each dollar is worth
18 each figure.

19 Senator Tunney. So if you are talking of \$15 billion
20 in five years, it is unreasonable to expect that each of the
21 \$15 billion will be spent, you are talking about fifteen years
22 in total, you are talking about \$45 billion, over the next
23 fifteen years, including exceptions, of course.

24 Mr. Jorling. If that were the case, I think the
25 real value in this is to have people require to focus on what

1 to achieve the standard in a certain period of time, and
2 then make a judgment as to how much it would cost, and to
3 apply this kind of modified Bentsen language as to whether we
4 should achieve it in the first five years or the second five
5 years.

6 If you take a situation like Houston, if you could
7 to to a landbase disposal system in either of those areas, you
8 could repair, I would not say all of it, but the great
9 majority of the problem of pollution in a relatively short period
10 of time, probably at very reasonable cost, probably at very
11 much more reasonable cost, of trying to impose an effluent
12 control program on each pollutant in that area, so I think
13 the value is to keep trying to reach.

14 Senator Muskie. You are talking about a lot of
15 lead time.

16 We are talking here in this authorization of five-
17 year authorizations, and it would take nine years to spend, it
18 would take nine years.

19 That is 1980. If we start right here on this scale,
20 which is less than the total scale to meet the total problem,
21 so if we want to implement it, if that is a fair measure of
22 how much time it takes to the whole job, then we are authoriz-
23 ing only enough money to do part of the job, you can disagree
24 as to what proportion of the job, and it certainly is not the
25 whole job, you do not want to include it in this proposal,

1 then are you really being realistic in setting a deadline.

2 It takes nine years to get the thing started, geared
3 up, authorized, and spent, and what we have got to put in
4 motion is the whole job, not a part of it.

5 Mr. Billings. It is not necessarily true, that the
6 other parts of this job are going to be funded in the same
7 manner.

8 Senator Muskie. In whatever manner it has to be
9 funded, it has to be started.

10 Mr. Billings. By the time the implementation plans,
11 as I tried to point out, you take this, this is the date in
12 which you are going to fully know, if this date is kept, what
13 is going to be required to get to there.

14 Now, that does not mean you will not be moving
15 toward that objective by way or by what you have done in
16 this period.

17 I do not think the final decision on what has to be
18 done to get from here to here has to be made before you get
19 there.

20 Senator Muskie. To answer your question, if what
21 you do not know about what you have to do to get to January
22 1, 1976, 1975, if you do not know is the major part of the
23 job, and without knowing, you are now making a decision that
24 must be done in five years, no-matter how big it is, how much
25 bigger then what you have already started, then how realistic

1 are you being in setting the deadline now.

2 If you are setting the deadline before you know what
3 you are going to do in that five-year period, that is what
4 you are saying.

5 You have a pretty good idea about that it involves,
6 then you ought to start funding it now to that full advan-
7 tage of the nine years lead time.

8 Mr. Billings. Maybe in essence you are beginning to
9 fund it now.

10 Senator Muskie. You are beginning to fund that
11 part of it, but you do not know what will happen, or that
12 the whole program may be turned into a land disposal kind of
13 a program.

14 Mr. Billings. Could we have the calculation?

15 Mr. Jorling. This is what you are after?

16 Mr. Billings. Yes.

17 Senator Muskie. May I ask, Senator Cooper asks how
18 much longer we might be going.

19 I could go for another hour, if the rest of you
20 can.

21 Shall we stay another hour?

22 Senator Boggs. Let's shoot for an hour, 7:00
23 o'clock.

24 Mr. Billings. Mr. Chairman, the estimates, and this
25 is of land disposal, for the total estimate waste generated

1 in the United States, is this point sources?

2 Mr. Jorling. This is sewer community, seventy
3 billion gallons is the projection of the total amount of
4 the sewer pipes that we have.

5 Mr. Billings. The range in low of 25 billion, and
6 this is including storm, to a high of sixty-five billion.

7 Senator Muskie. What is the data base for that
8 projection?

9 Mr. Jorling. I will run through some of these
10 calculations.

11 The principal source of data, for the calculation
12 of land disposal, is the first step of this project which
13 is not complete--

14 Senator Muskie. It is not complete?

15 Mr. Jorling. But there is only one advanced treatment
16 system that is complete, and that is in Lake Tahoe.

17 That is for a flow of 7.4 billion gallons, opposed to the
18 Muskeegan project.

19 The data base can be gotten on this account.

20 Well, let's go through the figures, and then go to the
21 issues involved in the system.

22 Based on a straight line extrapolation of the
23 Muskeegan and costs, the figures would be \$25 billion.

24 If you take some of the EPA calculations of certain
25 costs, Doctor Schaeffer has estimated that the high cost

1 would be \$56 billion.

2 The Environmental Protection Agency estimated the
3 cost at \$65 billion, but included in that \$65 billion is the
4 \$25 billion figure for storm runoff that Doctor Schaeffer says
5 is completely unnecessary, because it is already incorporated
6 in that system, so even if you accept EPA's figures, the figures
7 should be more like \$40 billion for total cost of land dis-
8 posal systems.

9 The land need for this, estimated by the Environmental
10 Protection Agency, will be 7.8 million acres, estimated
11 by Doctor Schaeffer to be less than one percent of the farm
12 land of the Country.

13 Senator Muskie. What is the data?

14 Mr. Jorling. Extrapolation based on the amount
15 included in the Muskeegan and Penn State, which has a some-
16 what smaller system that has been in operation for eight or
17 nine years.

18 Senator Muskie. On that basis, they will tell you
19 what it will cost in fifty states, variations, and so on?

20 Mr. Billings. We are giving you an estimate of
21 the available information, what it indicates.

22 Senator Muskie. I am not suggesting you indicate
23 any conclusion.

24 I am trying to find out how solid these figures are.

25 We are talking about national deadline of water quality

1 standard, what it is going to cost, and what the Federal
2 commitment to that ought to be, if we in fact are the ones
3 imposing the deadline.

4 That is why I am interested in knowing the quality
5 of the estimate.

6 I have not said you characterized them.

7 Mr. Billings. The information that has been extra-
8 polated, basically, it is basically the quality of discharge,
9 which is higher than that, which is probably necessary to
10 implement the national water quality standards, and I think
11 without going into great detail, either advanced waste treat-
12 ment, which is basically returning water to the sea water, at
13 say high quality of extraction, or land disposal is essen-
14 tially the same high water quality, in both cases, the figures
15 are close enough between \$40 and \$60 billion.

16 Now, that gives you an estimate of the two different
17 sources, of a range of costs, of providing a degree of
18 treatment, which would achieve essentially a no-discharge
19 standard, probably --

20 Senator Muskie. I do not see either of those
21 estimates better than a hundred billion we have been using.

22 Mr. Billings. They are cheaper.

23 Mr. Jorling. The Muskegan figures are relatively
24 hard data, as far as the cost data.

25 Senator Muskie. Tom, I really am unimpressed you can

1 take one project, and greatly rely on projected costs for
2 applying the system on a nationwide basis.

3 This is just too narrow a base.

4 Maybe I will object to making the projections, and make
5 as good a job as you can, but you cannot persuade me that you
6 have got the figures.

7 You have got to do much better than a guesstimate.

8 Mr. Billings. I think it is better than a guesstimate.

9 Senator Muskie. I have heard the testimony, and I have
10 never seen so much built on one day's testimony in my life,
11 as you fellows have built on that day's testimony.

12 I have read it. I do not find it that hard and
13 fast.

14 It is an interesting experiment. It has not yet been
15 put in place on the face of the earth, and we do not know what
16 anticipated or unanticipated unforeseen problems have been
17 generated, and no matter how sound it is as an experiment,
18 I do not see how you structure a whole national policy program
19 for dealing with the problem on that one experience.

20 Mr. Jorling. Let me start from a different direction.
21 The two places where water quality has been achieved in the
22 Country have been both places which have adopted no discharge
23 requirement, and one is Lake Washington, and the other is
24 San Diego Bay.

25 Both of those communities at the time they adopted

1 a no discharge requirement, were advanced with secondary
2 treatment systems of the best operation that is available
3 in the Country.

4 They were dismal failures. They were funded at very
5 high levels in the Federal Government. It was not until
6 they took the effluent from those systems, and piped it
7 out of that specific water shed, in this case, instead of
8 piping it out onto the land, they pumped it out to the ocean,
9 and this has been done in both areas, and there has been
10 a dramatic increase in water quality, so the real question
11 is do we continue to fund the kind of facilities that we
12 have been doing, which are producing no water quality benefits,
13 and then the question comes in, if you do not, where do you
14 go, and it is one of a technological kind of operation,
15 where you keep adding on technology, which is basically advanced
16 treatment.

17 The technological problems of reliability become
18 severe, and then do you start to look at ecological systems
19 to perform treatment, to take the load, which is generated,
20 onto the land, and that is the new materials then become
21 incorporated into the biochemical cycles which nature performs,
22 so Muskeegan is not just an experiment in the sense it is a
23 new kind of vehicle waiting to be used.

24 You have all kinds of strictly mechanical things.
25 The concept is not based on technology. It is based on

1 a natural system, and if you do add new trends to the soil,
2 and you control the rate of irrigation, you will enhance your
3 production, and this is the reason our testimony from every
4 ecologist said it would be better not to fund any secondary
5 treatment at all, but to put money into secondary treatment is
6 putting it down a rathole. They said it would be better to
7 figure out ways to use the land, as Senator Buckley said this
8 morning, it is a contained agriculture, to grow oysters
9 and clams rather than corn and wheat.

10 Senator Muskie. I can buy your analysis, but it does
11 not give the answer to these questions.

12 One, if the analysis persuades me that continuing
13 the program of waste treatment plants is pouring money down
14 a rathole, then why are we continuing it.

15 That is the first question.

16 Two, if the ecological approach is the approach, and
17 my question is has Muskeegan found a way to utilize the
18 approach, is it enriching agriculture, will it enrich
19 agricultural production by this means, will creating this
20 then create agricultural economic problems?

21 When we begin to see the problems, how do we
22 dispose of the sulphur we get from desulphurization of the
23 air pollutants.

24 We are finding we are driving the sulphur industry
25 out of business.

1 We do not know what to do with all of the sulphur.
2 There are all kinds of economic problems.

3 Have they been raised, have they been answered
4 satisfactorily?

5 I am suspicious of such a quick projection of one
6 experiment, without any questions at all occurring to anybody
7 about its application, its practicability, its economic good
8 sense.

9 It just suddenly becomes the shining answer to all
10 of the problems, so the third question I am asking is this,
11 whether we abandon waste treatment technology, adopt this,
12 as the way of the future, and then do it under the pressure
13 of timetables that require we make the choice now, and live
14 with it for the next ten years, that is what I want to know.

15 This answer never occurred to anybody on this staff,
16 or this Committee, until that one day of testimony, and all
17 of our assumptions up to that point are in another direction.

18 Now we go 180 degrees around, and for the next ten
19 years we will commit ourselves to this kind of objective.

20 Mr. Jorling. My reading is not to commit us to this
21 exclusively, but rather to begin a transmission to consider
22 as the alternative.

23 Senator Muskie. What we are talking about is a period
24 in which admittedly we do not have the final answer, if that
25 is the picture you are naking, and we do not know what we will

1 end up with.

2 Yet, we know in order to get an achievement in the
3 quality standard by 1980, that we have got to start something
4 now, that is something that is going to achieve, because we
5 are telling people that, then are we realistic in setting
6 the deadline.

7 It is so much lead time involved in all of this.

8 Mr. Billings. Are you going to prove out the
9 alternatives, and find the ways to do the job if you do not
10 set the deadline?

11 That is one of the responses.

12 Senator Cooper. Does the bill permit the use of
13 this method?

14 Mr. Joxling. Yes.

15 Senator Boggs. It does not require it.

16 Senator Cooper. Is this method appropriate for
17 every source?

18 Senator Boggs. Nobody knows.

19 Senator Cooper. Are there limitations?

20 Mr. Billings. There are limitations, land availability
21 and so on.

22 Senator Muskie. The willingness of the people to
23 accept this system, to permit the pollutants on their land.

24 Senator Cooper. In every case, it does not rule it
25 out. It does not rule the system out.

1 Senator Muskie. I have been asking the same questions.

2 Senator Cooper. Would the taking of this volume
3 out of the streams and river flows, would it have any effect
4 on the stream flows themselves, would they maintain certain
5 stream flows and clean water?

6 Mr. Billings. This too would vary, Senator Cooper,
7 and in the Muskeegan project they expect an eighty percent
8 return to the receiving waters.

9 The other twenty percent will go into the underground,
10 or into the atmosphere.

11 In some cases, the fact it goes into the underground,
12 it would be a Godsend, because of the problems of the under-
13 ground water depletions, particularly in the Southwest.

14 Senator Muskie. There is another question, if you
15 set a deadline, that forces people to begin to do it right
16 away, what must be done to achieve quality, as a deadline, and
17 are you not going to stimulate them to use the existing
18 methods?

19 In other words, if the waste treatment plant technology
20 is not the right way, and yet it was the only way available, and
21 if you imposed a deadline that requires them to get going
22 right away, are you not going to discourage them from experi-
23 menting with these other systems, because you would be pushing
24 them up to a deadline they cannot meet, or hope to meet.

25 Mr. Jorling. I think whatever is engaged in this,
it can be incorporated into one of these systems ultimately.

1 You can always take the effluent and divert it
2 in by pipeline to a land base final disposal system.

3 Senator Muskie. Is that Schaeffer's philosophy?

4 Mr. Jorling. Yes, it is.

5 Senator Muskie. I thought that technology was
6 pouring the money down a rathole.

7 Mr. Jorling. As an advocate, he would suggest that
8 anything that is premaced on discharging into receiving
9 waters is shortsighted.

10 He would prefer these systems, like in the City
11 of Chicago.

12 In Chicago right now, all of the secondary effluent
13 systems, it is all being discharged into the Chicago River,
14 and he is presently trying to encourage the Chicago Metropoli-
15 tan Sewage District, instead of discharging into that river,
16 to start and use land disposal systems, incorporating
17 the receiving concept, and they raised immediately one problem,
18 and that is they have no authority to acquire land outside of
19 their jurisdiction.

20 The print put together in part addresses itself to
21 that problem, but there is nothing that would prevent a
22 transition of an existing treatment complex to one of
23 these, and I think what we tried to do is encourage people
24 to look at this, specially look at it in context of future
25 treatment, and hopefully, move in that direction.

1 One of the problems is EPA, there have been many
2 documented cases, where people have come knocking on their
3 door to go to this kind of system, and they have been recalci-
4 trant, and they were recalcitrant even in funding the planning
5 of the Muskeegan Project, but even they admitted, that
6 this project is interesting, and that water after passing
7 through the filtering and decomposition processes is afforded
8 by soil, and it is far purer than any waste treatment process
9 short of dissolution.

10 The concept is sound. What we are trying to do now
11 provides a movement towards adoption of it.

12 Now, that does not answer your question at all,
13 as to when do you put this into a context of the deadline
14 with the standard, and I think that the deadline has the
15 effect of, first of all, making people think about the long
16 term.

17 Senator Muskie. Does EPA regard the program as
18 sufficiently tested, so that we ought to shift to it on a
19 national basis?

20 Mr. Jorling. No, they do not at this time.

21 Senator Muskie. Who does?

22 Mr. Jorland. I suspect that Doctor Schaeffer and
23 his colleagues do, the people associated with Muskeegan,
24 most ecologists that I have communicated with, and we have
25 had testimony on these procedures in 1970, and then again

1 this year, they all support this kind of a concept.

2 Senator Muskie. Supporting a concept is something
3 different than supporting it as a program.

4 Mr. Jorling. What they are basically saying is that
5 if you have to make a choice between exclusive support of
6 one, and exclusive support of the other, put the exclusive
7 support in the land based.

8 Senator Muskie. How strong is it if you have to
9 make a choice?

10 Mr. Jorling. We are saying you do not have to make
11 a choice that clear cut.

12 Senator Muskie. This will require thinking.

13 Mr. Jorling. You go to advance waste treatment, and
14 let's just look at this for a second, if the only treatment
15 system of this caliber which is the Lake Tahoe were the
16 same way as Muskeegan, it would require 32 percent of the 69
17 gas production, it would require \$62.62 of electrical energy
18 as distinct from the Muskeegan figure, which is \$16.83 for
19 the same amount of electricity.

20 The only reason I make these points clear, they are
21 areas which will have to go to advanced treatment.

22 The technological advanced treatment is extremely
23 expensive and unproven, much more unproven than the Muskeegan
24 kind of treatment.

25 Senator Muskie. Well, that may make the case for

1 ending the waste treatment plant approach, but it does not
2 make the case for adopting the other.

3 Senator Randolph. I came in late, and perhaps I
4 should not have come in, but we do not really know what our
5 achievement will be, but we do know one fact, and that is going
6 to be evident that it is going to be costly, whatever we
7 do, is this correct?

8 Senator Muskie. Yes. We do not know how costly.

9 Senator Tunney. That is one of the reasons for the
10 Bentsen language, which says that if the benefits to be
11 derived are unreasonable, that an examination will be given,
12 with the social and economic benefits to be considered
13 as unreasonable, considering the social and economic factors,
14 then you have an exemption that this will be tested every
15 five years, and I can certainly agree with the Chairman's
16 subcommittee, that you do not want to require an unreasonable
17 social or economic expenditure, where there are other priorities
18 demanding consideration in expenditure of monies, but I
19 think that the Bentsen language very clearly provides that
20 where you do have unreasonable costs, it says, on page 55,
21 line 6, "The Governor has justified to the Administrator
22 that the economic and social costs of applying such technology
23 or other alternatives bear no reasonable relationship to the
24 social and economic benefits (including water and quality
25 objectives) to be obtained;"

1 Senator Muskie. That is not the thing of concern.
2 You are like comparing this to the space program, and setting
3 a target date.

4 What is clear is that the total costs will be borne
5 by the Federal Government, that is, in the space program.

6 It was not going to be shared by private sector,
7 regardless of their ability, the local governments, the state
8 governments and so on.

9 You have an unspecified goal, except for the fact we
10 were going to land on the moon.

11 Whatever it needed, in terms of Federal commitment,
12 we escalated the Federal program, until it did reach its
13 peak, seven or eight billion dollars a year, all Federal
14 expenditure.

15 We made the commitment, Congress responded, and so
16 on, so even though we did not know the total cost, it was
17 an estimate, and it was specified, and it was pretty much
18 on target, as I recall, it was about \$24 billion, and that
19 is what it did cost to develop to get on the moon, and it
20 was a Federal commitment to do it.

21 Now, here what we are talking about nobody knows
22 with these figures, nobody knows what it will cost in the
23 next ten years to achieve this water quality.

24 I would like to get some accounting standard to this
25 kind of projection of national costs on it, not only on the

1 basis of the Muskeegan--

2 Senator Randolph. If I may make just this brief
3 comment, as I understand it, about the 15th of August, while
4 we are in recess, there will come to our Committee, from the
5 United States Corps of Engineers, the designers of the systems,
6 for Cleveland, and across to San Francisco, and from Boston
7 and Chicago.

8 Now, as I also understand, that will be about fifteen
9 percent of the total population of the United States that
10 will be incorporated in that area, and about twenty-five percent
11 of the population that has been sewered.

12 Do you think that would be any help, as we move
13 into this subject matter, to study, very carefully, what is
14 found there, or do you think it has any validity?

15 Senator Muskie. Well, any evidence there is good.

16 What I want, to the extent that we can get it, if it is
17 going to cost a hundred billion dollars, and we know that,
18 to achieve this quality, in ten years, that is ten billion
19 dollars a year, so you go to the Congress, if that is what
20 you decide, you say, we have identified this.

21 This is what it is going to cost. It is important
22 enough to say we ought to spend ten billion dollars, no matter
23 what that does to the resources that would otherwise be avail-
24 able to build housing, or the disadvantaged, or to provide
25 jobs, or to do these other things, but what we are talking
about here is the majority on this Committee have approved it,

1 an expenditure leve of \$5 billion.

2 Now, that is five times the level we have been
3 spending, and that additional \$4 billion, you may be able
4 to get all of it out of military spending, together with
5 everything else, we will commence, we will accomplish, I
6 don't know, but my suspicion is we will get that \$4 billion
7 a year at the cost of some other domestic programs, as well
8 as the military, at least there is that possibility, and
9 the \$5 billion a year will not do this job, we are talking
10 about in this standard an achievement that we must get.

11 I think it is clear it will not do that, so that
12 to do that, it will take something more than \$5 billion
13 a year.

14 This is just a wild guesstimate on my part, because
15 we have not got enough evidence to prove or disprove what I
16 am saying, but that is the feeling of this problem, as I sense
17 it, and it is the uncertainties of it.

18 The Muskeegan thing, though promising it may be, it
19 does not answer these uncertainties.

20 Senator Tunney. How do you read the Bentsen
21 language?

22 Senator Muskie. That is a particular project cost.
23 You say you do not require this factory to meet this,
24 because it is unreasonable.

25 You do not apply that to the total budget.

1 Senator Tunney. You do to the implementation plans
2 of the state.

3 Senator Muskie. That standard, I do not think it is
4 going to make an appreciable dent on these overall program
5 costs.

6 Mr. Billings. The Bentsen limitation goes to the
7 benefits to reach a river, not to the benefits of the
8 cleaning up of a particular river on the national standard,
9 not to a particular individual source.

10 Senator Muskie. We do not know to what extent
11 the application of the Bentsen standard will exclude the
12 waterways from that standard, and what the net reduction
13 program costs will be.

14 Mr. Jorling. Perhaps we go some distance in this
15 way. I don't think it would be the idea of a date on cost,
16 so what I think we are all grappling for, there just is not
17 very good data, and one of the functions of the implementa-
18 tion plan is to require the states to review their entire
19 situation, in the context of meeting some objective, and
20 making a judgment, submit that to the Administrator by this
21 date of 1975, I think if we could use that, by stating in
22 there we should include to the best of their knowledge, the
23 cost of meeting that requirement, and then the Administrator
24 and the Congress would be in a position to know, because
25 that time is almost concurrent with the lapse of the funding

1 we are authorizing in this bill, to come to the Congress with
2 the implementing fund to reach that standard, subject to
3 the exemption, or the extension language, but somehow, we
4 have got to go through a very detailed development plan so
5 we can develop what it will take, to move us to some
6 objective.

7 We just have not had that. It has all been, like
8 secondary treatment has been developed, completely aside
9 from water quality.

10 Senator Muskie. We have had requirements of costs.
11 There is an annual report that is filed.

12 Mr. Billings. The annual report that is filed, it
13 has a \$12.6 billion figure in it.

14 The Council on Environmental Quality report estimates
15 \$22.4 billion figure, the national amount.

16 Senator Muskie. So what does that suggest to you
17 about any Congressional requirement that such costs be
18 prepared?

19 Do you think the future one will produce any better
20 results?

21 Mr. Billings. What it suggests to me is that the
22 evidence we will get later will not be any better than the
23 evidence we have got right now.

24 Mr. Jorling. If the people develop the cost estimates
25 associate it with objective--

1 Mr. Meyer. That is unrealistic. Any agency report
2 that comes to you on what dollars will be involved in any
3 particular program will be what the Office of Management
4 and Budget at that particular time is willing to say we
5 are ready to make a commitment on.

6 Mr. Jorling. The one to do this here is the
7 Governor.

8 He will say what. If he will come in and say I need
9 an X number of dollars in my state, then we know.

10 Senator Beall. If he knows how to do it.

11 We have been talking maybe--

12 Well, we do not know how to meet this standard.

13 Senator Tunney. You are suggesting then we do not
14 know how to clean up pollution?

15 Senator Beall. We are arguing about secondary
16 treatment versus the Muskeegan Plan.

17 We are saying secondary treatment is not satisfactory,
18 and we have not proven the Muskeegan Plan.

19 Senator Tunney. I went to a water project in
20 California in which the raw sewage goes into a treatment
21 plant, and about a hundred yards down the line, there is a
22 pipe with sweet water coming out that you can drink.

23 I drank it, so they have the technology.

24 Senator Buckley. What does it cost?

25 Senator Tunney. That is why this sewer treatment is

1 high.

2 It would seem to me to be unreasonable for every
3 area of the Country to go this treatment, but it is not a
4 question of technology, the technology is there.

5 Now, I had the opportunity within the last six months
6 to meet with the top engineers of eight aerospace corporations,
7 and they all will tell you that you never can get a decent
8 trade-off of costs and benefits, that you can never get a
9 decent trade-off of costs and benefits until you have a goal.

10 You have got to know what the standards are that
11 you are going for, and at that particular point, they can
12 start using systems and analyze techniques to begin to
13 develop trade-offs.

14 Maybe land disposal is the best way, maybe dumping
15 out in the middle of the ocean is the best way.

16 It is a question of having a goal that you are
17 shooting for.

18 Senator Beall. I think we should have a goal.
19 I say let's not put the costs on the goal, unless we know
20 how to get to the goal.

21 Senator Tunney. I think the answer is to have the
22 goal, with an exemption provision to extend the goal in those
23 areas where it will be particularly expensive to clean it
24 up.

25 Senator Muskie. If you set a deadline, as we did in

1 the case of the automobile, if it is going to be meaningful,
2 in the sense that you are describing its importance, then
3 it has to be an irrevocable goal.

4 That is what we have got to label it.

5 If it is that, people know that by that deadline,
6 they will be required to achieve a certain result, and what
7 will they do, experiment, they will try new methods of
8 procedures, or are they going to take the best that is
9 available, and freeze it in concrete.

10 Senator Tunney. When we started the Manhattan
11 Project, do you think the scientists sat down?

12 Senator Muskie. Senator Cooper, you had a different
13 proposition.

14 You had the question of the Federal Government taking
15 on the whole assignment, committing the Federal Government,
16 the resources, and just bringing them in, and doing the
17 job.

18 What we are talking about here is something that
19 will be spread out across the landscape of America, funded
20 in part by the Federal Government, and part by state Govern-
21 ment, and a great part by private industry, part by farmers,
22 and part by all of the users and polluters of water, and
23 there is no way of bringing them all into the room and knocking
24 their heads together, mobilizing their resources, and this
25 is a most cumbersome kind of task, and we are going to set this

1 whole machinery, we will set all of this in a direction, and
2 apply momentum to it, and a deadline, requirements, and so on,
3 and it is no where near as easy to move as it is a totally
4 Federal program, inefficient as the Federal establishment
5 can be, it is no where near as easy to do.

6 Ever since we have landed on the moon, all of us
7 have been trying to translate social objectives of that
8 kind.

9 If you just say goal, and you have no requirement,
10 this would not automatically do the job. You can discredit
11 an objective and a goal.

12 When you talk about five or ten billion dollars a
13 year, you cannot close your eyes to other socially important
14 objectives, so if you have made your requirement irrevocable,
15 that you have no choice but to make that commitment of
16 resources, and you are asking it of others, whatever doubts
17 you may yourself subsequently develop as to your own commit-
18 ment, you are asking it of others, so then this is a commit-
19 ment.

20 I think you are talking about five to ten billion
21 dollars a year, at some point in this decade, to achieve
22 that water quality standard.

23 Senator Tunney. We have been spending \$5 billion
24 a year?

25 Senator Muskie. Not the Federal Government. We are

1 talking of \$5 billion a year of Federal resources just in
2 this first four years.

3 Federal resources is what we are talking about. This
4 is not total program costs.

5 What we are providing is authorizations of \$20 billion
6 and that is \$5 billion a year of Federal money, and it will
7 take more than that.

8 Senator Tunney. I asked Tom a little earlier how
9 much we have been spending, and that is since 1965, under a
10 far more limited Federal program, with the Federal Government
11 putting up a billion dollars in this year, on the average
12 of five years was his answer.

13 Mr. Billings. The Federal Government put up \$1.4
14 billion.

15 Senator Tunney. A total of \$1.4 billion in five
16 years.

17 How much has been spent totally?

18 Mr. Jorling. About \$6 billion.

19 Senator Tunney. How much has been spent by
20 industry?

21 Mr. Jorling. \$6 billion. That is a very high
22 estimate. I withdraw that.

23 Senator Muskie. All that does in intensify my concern
24 about the magnitude of what is undone.

25 What has been done is such an insignificant proportion

1 of the total job, and if we spent \$6 billion, plus \$6 billion,
2 \$12 billion in five years and not begun to do the job--

3 Mr. Billings. Estimated figure, 1952 to 1968, \$14
4 billion.

5 The estimated investment for waste treatment works
6 from 1952 to 1968 is \$14 billion, the whole thing.

7 Senator Muskie. \$14 billion to 1968?

8 Mr. Billings. Yes.

9 Senator Muskie. And that has not succeeded in
10 improving water quality whatsoever.

11 Mr. Billings. I assume you could extrapolate that out
12 to \$20 billion, a billion dollars a year, average over the
13 twenty years.

14 Senator Tunney. What are we spending in five
15 years?

16 Mr. Billings. I would say probably half of it has
17 been spent in the last five, since 1966.

18 Senator Muskie. And we have not improved the
19 water quality whatsoever.

20 Senator Tunney. Like this letter that I have, from
21 the Director of the Water Resources Marine Science Center,
22 and who is on every Presidential Commission, one of the
23 most eminent water resource men in the industry, in this
24 Country, he says we have done an awful lot.

25 He says we have achieved a great deal.

1 Senator Muskie. We better get his testimony.

2 Senator Tunney. I have his letter right here.

3 Senator Muskie. Does it quantify this estimate
4 of what we have done?

5 Senator Tunney. He does not quantify in detail
6 what has been done, but he does indicate an awful lot has
7 been done already, and he also says in his opinion that the
8 goal is not only legitimate, but it is something that is
9 essential, and he also indicates that in his mind, he said,
10 I do not know if it is in his letter, but he said it to me
11 privately, in his mind the kind of Bentsen language is
12 essential.

13 That is the way you get out from under a situation.

14 Senator Muskie. You do not get out from under the
15 total program costs.

16 Senator Tunney. Not total.

17 Senator Muskie. How much of an investment do we have
18 to make at the Federal level, and at the other levels of
19 American life, including other levels of government to
20 achieve that goal?

21 I think that is a relevant fact. That is a relevant
22 piece of information.

23 Otherwise, if we commit ourselves to a goal, and
24 authorize legislation, find from a Federal point of view, the
25 Federal budget, this is just taking too much away from other

1 social objectives, and recognize that what we have done, we
2 have undermined the credibility of the whole process.

3 Senator Tunney. What we have decided is that our
4 national priorities are such that what we are going to
5 do--

6 Senator Muskie. You are prepared to say even though you
7 do not know, if it happens to cost ten billion dollars a
8 year of Federal money, you are prepared to vote for that,
9 whatever it does to other items on the budget?

10 Senator Tunney. Absolutely not. I want to have
11 the Bentsen language to be in there.

12 Senator Muskie. That would not affect that judgment.

13 Senator Tunney. It is a state implementation plan.

14 Senator Muskie. I do not know what dollars the
15 Bentsen language represents in terms of the total cost, even
16 the \$20 billion we are talking about here, is it sizeable?

17 We were talking about the Bentsen language as being
18 the rare case.

19 If it is the rare case, it could not represent a
20 significant proportion of the \$20 billion.

21 Senator Tunney. The rare case can be terribly
22 expensive.

23 Senator Muskie. If I thought the Bentsen amendment,
24 \$2 billion reduction in what would otherwise cost twenty,
25 I do not think I would be for it. I think the Bentsen amend-

1 ment would be too wide an opening in the door.

2 Senator Tunney. Are you prepared to go before the
3 American people with a \$5 billion a year program, and say
4 we will not have a standard in ten years, which is going
5 to provide for the protection of public health?

6 Senator Muskie. I do not think I would put it that
7 way, do you?

8 Senator Tunney. No, I would not.

9 Senator Muskie. What I am talking about is not
10 what we are going to the public with.

11 I am talking about what responsively do you try to
12 establish your data basis, for what you are promising the
13 American people.

14 I have indicated I think over the last ten years,
15 there is a willingness to ask the Congress and the American
16 people to stretch themselves to reach the goal of clean
17 water, and I am still prepared to do so, but I cannot close
18 my eyes to the possibility that if what we are asking means
19 a commitment at some point, as yet undisclosed of as much
20 as five to ten billion dollars of Federal dollars, that I am
21 prepared at this point to say I am willing to take that
22 out of the poverty money, I am prepared to take that out of the
23 hunger money, I am prepared to take that out of housing money,
24 I am prepared to take that out of transportation money, I
25 am prepared to take that out of the cities money, are you

1 prepared to say that to the American people?

2 Senator Tunney. I am not prepared to say that.

3 Senator Muskie. I can make the propaganda speech
4 too, but I am saying while we are writing this bill, and what
5 we demand here socially, we have to take into account of
6 when we talk of this magnitude, the impact of other programs, I
7 do not think it is irresponsible or chicken-hearted with
8 respect of water quality to suggest we have to consider--

9 Senator Tunney. I think you should suggest it, and
10 if the Bentsen language as an out is not acceptable to the
11 Committee, maybe we ought to change the language.

12 Senator Muskie. I do not see the Bentsen language as
13 being such an important measure of the total cost of the
14 program, that you can put a price tag on it, that substantially
15 reduces the overall estimates of costs.

16 I do not see the Bentsen language as being that
17 frequently used.

18 If it is going to be that frequently used, then it is
19 too loose in my judgment.

20 I suggest that the staff maybe can focus our attention
21 on other items in the agenda that we might be able to clean
22 up before 7:00.

23 I frankly am not ready to settle the other question
24 at this point.

25 Senator Boggs. Mr. Chairman, on this point, in consi-

1 dering the points we have been discussing here, and you have
2 been making, would you consider a possibility of not having
3 a deadline of 1980, for example?

4 Senator Muskie. I am still struggling to preserve
5 a deadline.

6 I am still not satisfied we have a case to take to the
7 floor at this point.

8 We may be able to develop it, but I hesitate to give
9 it out.

10 I want some facts.

11 Senator Boggs. I agree with you about the facts. It
12 is difficult to have too much confidence, or to hold out to
13 the public these figures, in light of what has transpired in
14 the last several years, figures on all kinds of programs that
15 have not stood up, even going up to a \$12 billion figure, and
16 have to change it in eighteen months to \$52 billion, but in
17 light of that, it is hard to hold out a pretty firm figure
18 to the public, and it is hard to hold out anything more than
19 the best guesstimate at this time, it would seem to me, but
20 I hope we can get all of the information, all of the data
21 we can to make a firm judgment.

22 It is a dilemma.

23 Senator Muskie. Well, we could if we digest a little
24 more what we have.

25 Senator Tunney. Could I just mention one point, which

1 he mentions in his letter, he says from an economic standpoint,
2 it is quite clear the nation has already made a massive invest-
3 ment in water pollution control facilities and associated com-
4 ponents since the first part of the century. Over our history
5 in placing the investment in terms of 1971, current dollars,
6 I estimate that to be about \$50 billion has already been
7 spent in capital and operating costs, and the thing about
8 this man is that he is not a lightweight.

9 He is one of the heavyweights in this business. He
10 is a member of the President's Advisory Committee, and of
11 many other important organizations.

12 Senator Muskie. He may be a heavyweight in one piece
13 of area, but that does not necessarily qualify him in all
14 areas.

15 I would like to see this breakdown on the \$50 billion.
16 If he is so expert, let me see some sound figure, or has he
17 got some documentation and data base for that kind of an
18 estimate.

19 There are a lot of experts in this water quality field,
20 whom I recognize, whom I would not necessarily recognize as
21 being able to produce the kind of economic cost data that we
22 are searching for.

23 Let us go to item 12.

24 Mr. Billings. Page sixty-seven.

25 Senator Muskie. This is one thing we have given a

1 great deal of attention to.

2 Let me ask Leon to respond to this.

3 Mr. Billings. The staff has revised this section
4 of Toxic and pretreatment standards to reflect the number
5 of comments which we received on the provision.

6 We have taken out the statutory ban on the discharge
7 of these substances, and instead established a statutory
8 prohibition from which the burden of departure is on those
9 that would seek an effluent standard.

10 The provision breaks into two parts that first
11 part which deals with Subsection (a), which deals with toxic
12 pollutants, and Subsection (b), which deals with pretreatment
13 standards, and the staff has reservations about retaining
14 the specific list of pollutants which appear on page sixty-
15 seven and sixty-eight, for these reasons.

16 There is not adequate evidence in the record to
17 support all of them, though in some forms, in some of jthese
18 pollutants they are known to be highly toxic, the form named
19 by the statute is not necessarily that form, and, therefore,
20 it might be more appropriate to retain the structure of the
21 section and put the list of pollutants aside.

22 Senator Eagleton. You want EPA to add, subtract,
23 modify the list?

24 Senator Beall. Is floride on the list?

25 Mr. Billings. Floride is on the list.

1 This would be a part of the published list.

2 Senator Muskie. Is there another point of view among
3 the staff?

4 Mr. Billings. The staff is only entitled to one
5 point of view, Mr. Charman.

6 The staff gets together on these things.

7 Senator Muskie. Subject to change.

8 Mr. Billings. Tom left the room.

9 Senator Muskie. Any questions on the part of the
10 Committee to that approach?

11 Mr. Billings. What you would be doing, you would
12 put a period after Administrator.

13 Senator Muskie. I suppose you could indicate what
14 the Committee is concerned about, and have had some discussions
15 is about this.

16 Mr. Billings. The other thing, so many of these
17 items appear in natural forms, both in pherous and nonpherous
18 forms, and it cannot be separated from the waste stream, and
19 they are not toxic in that structure, but when they undergo
20 chemical change, they become toxic.

21 Senator Boggs. Just put the list in the report and
22 in the Federal Register.

23 Mr. Billings. We will put it in the report, and the
24 Administrator will put it in the Federal Register.
25

1 Now, this says not to exceed. It is an outside
2 limit.

3 There are physical limitations, practical limitations
4 applying to effluent standards.

5 Senator Muskie. And you will have a range of toxicity
6 too, so you have to take into account all considerations. I
7 think the report ought to indicate it is not the desire to set
8 one year as the goal, simply to provide flexibility.

9 I think the report ought to be clear on that.

10 Are there any other questions about this provision?

11 If not, without objection, we will report it to the
12 full Committee.

13 When I say that, may I say, if any of you have
14 second thoughts before our final action to report it to the
15 full Committee, do not hesitate to raise it.

16 Mr. Billings. Mr. Chairman, on page 95 to 98, the
17 domestic pollutant control is required because of the
18 amendments dealing with the Refuse Act, and the amendments to
19 the certification procedure.

20 This is required to provide the Administrator and
21 EPA with a regulatory mechanism to control the discharge of
22 pollutants, either by outfall pipe or by dumping into the
23 ocean.

24 This provision, so far as we know, without real
25 controversy, it is without controversy as to content.

1 It is with real controversy as regards the jurisdiction
2 of the committees of the Senate.

3 The basis for the program written here is that these
4 are wastes that were generated in the United States, in many
5 cases they would be wastes which result from other pollution
6 control programs, solid wastes disposal, water pollution, or
7 air pollution control, and is logical to extend control
8 over the final disposition of wastes, and the same legislation
9 over which you extended the initial controls.

10 Senator Muskie. Does this cover coastal communities
11 as well as other?

12 Mr. Billings. It covers discharge outfalls, if that
13 is what you mean.

14 Senator Muskie. This would cover Los Angeles?

15 Mr. Billings. It would cover San Diego. It would
16 cover Portland.

17 Senator Muskie. To that extent, it covers our juris-
18 diction?

19 Mr. Billings. It covers wastes that are generated
20 in the United States, and transported from it into the
21 territorial seas, and into the ocean.

22 At the 1972 Stockholm Conference, the principal issue
23 which will be considered with any chance of getting an
24 endorsement by the nations involved will be the question of
25 marine disposal pollutants, and provisions such as this would

1 put America in leadership condition in terms of regulation
2 of ocean disposal of pollutants.

3 Senator Muskie. What it requires is, is secondary
4 treatment?

5 Mr. Billings. In terms of the dumping of pollutants,
6 or the discharge of pollutants, the criteria set forth on
7 page 97, which sets forth the limitations on any discharge you
8 dump, the Administrator has to establish guidelines before he
9 can issue a permit for the discharge, or the dumping of
10 pollutants.

11 He has to determine that that discharge would meet the
12 guidelines he sets forth.

13 Senator Muskie. What standard of quality discharge is
14 the objective here?

15 Mr. Billings. The standard determination as to
16 whether to grant a permit will be made in accordance with
17 the guidelines.

18 Senator Muskie. What is this on line 20, page 86?

19 Mr. Billings. This is the case where you have an
20 outfall pipe going into the ocean at the present time.

21 In the case of an outfall pipe that already exists,
22 the Administrator would be required to impose an effluent
23 limitation which would--

24 Senator Muskie. Is there anything wrong with having
25 that in?

1 Mr. Billings. No, sir, it would not be in there if there
2 was anything wrong with it.

3 Senator Tunney. How does this dovetail into the 1899
4 Refuse Act?

5 I am confused.

6 Mr. Billings. It does not relate to it.

7 Senator Tunney. There is no relationship at all,
8 it does not have anything to do with the 1899 Refuse Act
9 which also provides for the program?

10 Senator Muskie. It is the same subject.

11 Mr. Billings. To the extent the 1899 Act provides
12 authority to regulate the discharge into the territorial
13 sea, this would overlap and duplicate that authority.

14 Senator Tunney. I am sure of that.

15 Mr. Billings. We assume, the President has said
16 he intends, or at least we are told by EPA that they intend
17 to transfer the Refuse Act of 1899 to the EPA, that the
18 language has been provided here, therefore, when the transfer
19 occurs, the duplication will disappear, but until that trans-
20 fer takes place, there is a duplication.

21 Mr. Billings. There is a duplication, however, the
22 EPA has final veto power over any permit issued under the
23 1899 Act, but there should be no duplication of fact.

24 Senator Muskie. Does this have the effect of
25 softening the present Administration policy, with respect

1 to these discharges?

2 Mr. Jorling. It would strengthen it, because there
3 is no reference point for controlling discharges under the
4 Refuse Act.

5 Senator Muskie. To territorial waters?

6 Mr. Jorling. There is no applicable water standards.
7 It does not give you a measure of what you can put in, so what
8 they will do in reference to dumping of discharges into the
9 ocean, would be basically to do what they intended to do
10 nationwide, that is a secondary treatment equivalent, whatever
11 that is.

12 This is not duplication for municipals or for indus-
13 trials.

14 Mr. Billings. This does set up a criteria on which
15 to base a judgment, as to whether to allow industrial discharges,
16 and there is no basis for judgment in the Refuse Act.

17 Senator Boggs. This is taking away from the state
18 the right to issue permit for the territorial--

19 Senator Muskie. How does this affect these industrial
20 polluters as to their getting permits under the Refuse Act
21 program?

22 How is that going to be affected by this authority,
23 or the exercise of this authority, or is it the intention
24 that the authority be exercised over industrial polluters
25 under this language?

1 Mr. Billings. It is the intent that the authority
2 be exercised, such as in the case of discharge occurring, this
3 would set forth a requirement on those permittees, if they
4 had a permit to discharge at the present time, so, yes, there
5 is going to be duplication, unless there is a grandfather
6 clause that lets them drop out.

7 Senator Muskie. Well, I suggest we not act on
8 this until tomorrow.

9 None of us have had a chance to digest it.

10 Let me ask, if you have put together the language
11 to conform the permit program, the water standards program,
12 in accordance with the suggestion of the other day?

13 Mr. Billings. Here it is.

14 Senator Muskie. Now, this does what I suggested the
15 other day, in very simple language, to try to establish a
16 tie-in between the Refuse Act permit program and the Quality
17 Standards Program.

18 What it does, it is to provide in part, where the
19 Federal agencies have defined the character of the discharge
20 to be permitted, that the state agency, when they are asked
21 to certify whether or not the proposed discharge conforms to
22 water quality standards, and with that procedure, it applies
23 only with respect to the Refuse Act permit program.

24 With respect to all other Federal licensees and permits,
25 the applicant, he would apply for state certification before

1 applying for the permit, for the permit from the Federal
2 agency.

3 Senator Buckley. Where does this tie into this?

4 Mr. Meyer. Page ninety-five.

5 Mr. Billings. It would require language introducing
6 it as an amendment to Section 21.

7 Senator Muskie. It would be a separate section.

8 Mr. Billings. We will provide it tomorrow morning.

9 We will show you exactly where it goes.

10 Senator Muskie. These items we will take up the
11 first thing in the morning, these items that we have left.

12 Senator Buckley. Which is when?

13 Senator Muskie. The Senate is meeting at 8:00 o'clock.

14 We will meet here at 9:30 or after the first vote,
15 whichever comes first.

16 The Committee stands in recess.

17 (Whereupon, the Subcommittee was recessed at 7:00
18 o'clock p.m., scheduled to resume at 9:30 o'clock a.m.,
19 August 5, 1971.)
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